

**TOWN OF HUNTERSVILLE
REGULAR TOWN BOARD MEETING
MINUTES**

**April 20, 2009
6:30 p.m. – Town Hall**

The Regular Meeting of the Huntersville Board of Commissioners was held at the Huntersville Town Hall at 6:30 p.m. on April 20, 2009.

GOVERNING BODY MEMBERS PRESENT: Mayor Jill Swain; Commissioners Ron Julian, Ken Lucas, Sarah McAulay and Brian Sisson. Commissioner Charles Jeter entered meeting late.

Mayor Swain called for a Moment of Silence.

Mayor Swain led the Pledge of Allegiance.

MAYOR AND COMMISSIONER REPORTS/STAFF QUESTIONS

Commissioner Julian

- The next meeting of the Council of Planning for NC 73 is May 14.

Commissioner Lucas

- The next Police Dispatch meeting is in June.
- The Lake Norman Transportation Commission met with CATS regarding the commuter rail. We had a really good discussion on both the opportunities and obstacles facing us on the commuter rail.

Commissioner McAulay

- The LNREDC met at Metrolina Greenhouses last Thursday and went on a tour of that facility.
- The Planning Coordinating Committee meets twice a year. The fall meeting has not yet been scheduled.

Commissioner Sisson

- The next MPO meeting is April 29. The main subject on the agenda is the Augustalee project.

Commissioner Lucas asked Bill Coxe to run down highlight points on the Augustalee project.

Bill Coxe, Transportation Director, said there are four issues:

- The long-term effect of the construction of an additional interchange on I-77 at the Westmoreland bridge on the operations of I-77, which is a strategic regional resource. A comprehensive study done in 2001 recommended not adding any additional general purpose interchanges to I-77. Until someone does another comprehensive study I would recommend that we not add anymore interchanges.
- The process that is being followed in this particular endeavor is a process that is outside the normal comprehensive transportation planning process. You normally set a vision for your community, how you wish that vision to progress, then you adopt a transportation system that

will help you achieve that vision. In this case we are bypassing the opportunity to engage in a comprehensive discussion of the community's vision. Cornelius has had a comprehensive discussion within themselves, but the community at large has not.

- The request before the public is that property tax revenues be pledged to reimburse a privately secured developer loan on this. The discussion that was held in the Cornelius zoning hearings for the matter are that the county would be one of the participants in that and that would engage Mecklenburg County in the property tax funding of the interstate highway system in North Carolina. In 1931 counties were taken out of that business. My suggestion is that before you go back into that business you need to have a public discussion of that.
- An additional general purpose lane in each direction can be added on I-77 from 485 to Exit 28 or 30. The question arises what use do you place on that lane. Do you place general purpose usage or do you manage that lane so it flows freely as well as return some revenues to the public to help fund construction and that would be what's called a high occupancy toll lane and a revision to the high occupancy vehicle lane south to 85 into a high occupancy toll lane. There's a managed lane study going on right now for the entire region and I-77 fared very well in that.

Commissioner Jeter entered meeting and apologized for his tardiness.

Commissioner Jeter

- The next Lake Norman Chamber meeting is next Monday.
- The next School Advisory Committee meeting is to be determined. The main issue the School Advisory Committee is working on right now is the delay in selling bonds and how that may or may not affect school construction. Mayor Swain requested the committee discuss the proposed boundary assignments.

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

Carroll Gray, Lake Norman Transportation Commission, said Huntersville, Cornelius, Davidson and Mooresville adopted an interlocal agreement which called for establishing the Lake Norman Transportation Commission. The expectation was that we as four towns working together could get more done than we could four towns working individually. We think a collective voice can be heard if we take the regional approach to our transportation challenges. We are organized and are responding to opportunities as they come about. When the debate on using stimulus money was kicking around a few weeks ago, the commission supported very strongly using the stimulus money that was available for this region to widen Highway 73 from US 21 through the interchange at NC 115 beyond the tracks, which is a major bottleneck for all of us. We also spoke in favor of the realignment of Prosperity Church Road. There are eight members of the commission. You are very ably represented by Commissioner Lucas and Manager Ferguson. Each town has appointed a person as well as a staff member to be on the commission. We've adopted an internal working plan that we don't take a position on anything unless it can be unanimous. We elected Brian Jenest who is a Davidson commissioner to chair the LNTC for the first year. Most of my time since becoming official at the retreat on February 17 has been dedicated to meeting the key people in our decision chain – people who have to say yes before things happen in our area. I've attended a lot of meetings in the past two months, especially the MUMPO meetings, MTC meetings, air quality meetings, Highway 73 meetings and many others. Our agenda for May 13 includes a discussion of the transportation implications of Augustalee, as well as taking a look at the cost of North Commuter Rail. We also will be taking up our operating budget for a full year from July 1 through June 30, 2010.

Travis Dancy, Visit Lake Norman, reminded everyone of the Wal-Mart FLW Tour National Guard Open hosted by Visit Lake Norman April 23-26 at Blythe Landing. This is the third consecutive year we've hosted the most lucrative bass fishing tournament in North Carolina's history. We'll have 300+ anglers competing for a \$1.1 million purse, with the top pro taking home a possible \$200,000. Last year's event had a \$1.5 million direct economic impact on Lake Norman's economy.

AGENDA CHANGES

Commissioner Lucas made a motion to remove Item J from Other Business (Consider adding statement to Rules of Procedure that any resolutions, proclamations, statements or decrees or any other form of communication indicating Town Board support or approval will be placed under Other Business or Consent Agenda for a formal vote); move Item H of the Consent Agenda (Approve budget amendment appropriating fund balance in the amount of \$37,000 to provide for a consultant to develop, analyze and conduct public involvement on Option 4 for the Vance Road Extension component of the NW Huntersville Transportation Study) to Item J under Other Business; and add Item P to the Consent Agenda – Call a public hearing for Monday, June 1, 2009 at 6:30 p.m. at Huntersville Town Hall for a request by American Asset Corporation to close existing Everette Keith Road crossing of the Norfolk Southern rail line at the Alexanderana Road intersection.

Commissioner Jeter seconded motion.

Motion carried unanimously.

Commissioner Jeter made a motion to adopt the agenda, as revised. Commissioner Sisson seconded motion. Motion carried unanimously.

PUBLIC HEARINGS

Planning Board members present: Jeff Neely, Barry Hester, Bruce Andersen, Joanne Miller and Sam Mount.

Mayor Swain called to order public hearing on Petition #R09-01, a request by Bunker Land Group to rezone approximately 24 acres located along Rich Hatchet Road approximately 900' south of NC 73 from Neighborhood Residential to Traditional Neighborhood Development – Urban Conditional District for a 456-unit apartment complex.

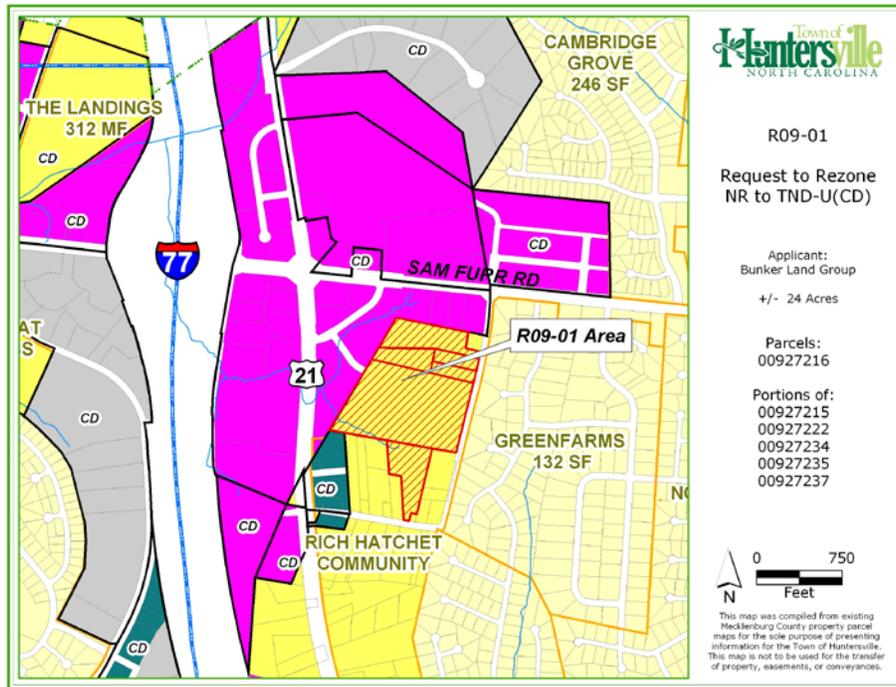
Whitney Hodges, Senior Planner, reviewed Staff Analysis. *Staff Analysis is below. Other documents related to this public hearing are attached hereto as Attachment No. 1.*

**Rezoning Petition #R09-01
Holly Crest - Conditional District Rezoning
Staff Analysis**

EXPLANATION OF THE REQUEST

R09-01 is a request by Bunker Land Group to rezone 24.04-acres located at 9711, 9929, and 10027 Rich Hatchet Road approximately 900 feet south of the intersection of Rich Hatchet Road and NC 73 from Neighborhood Residential (NR) to Traditional Neighborhood Development- Urban Conditional District (TND-U CD). The development is called *Holly Crest* and would consist of 456 multi-family (apartment) units.

LOCATION



SITE PLAN DESCRIPTION

1. **Property Owners:** Emehel Children's Irrevocable Trust (Johneric Emehel and Annie Brown); Eloise and Joe Ray; Bennie and Vernon McLaughlin; Annie Stinson and Ernest Wilson
2. **Project Size:** Approximately 24.04 acres
3. **Address:** 9711, 9929, and 10027 Rich Hatchet Road
4. **Parcel ID Numbers:** 00927216 and portions of 00927215, 00927222, 00927234, 00927235, and 00927237
5. The property is located on Rich Hatchet Road, approximately 900 feet south of NC 73 (Sam Furr Road). The property can also be accessed at the end of Holly Crest Drive adjacent to the North County Library.
6. **Current Zoning and Land Use:** Zoned Neighborhood Residential (NR). There is one house on the property and the rest of the land is vacant.
7. **Proposed Zoning and Land Use:** Traditional Neighborhood Development-Urban Conditional District (TND-U CD). The development will contain 456 multi-family units (apartments) See Site Plan Details for more information on phasing and the multi-family units.
8. **Adjoining Zoning and Land Use**
 - a. To the north: Highway Commercial (HC) zoning; properties are used for offices, medical offices and commercial uses.
 - b. To the south and east: Neighborhood Residential (NR) and General Residential (GR); properties are used for single-family residential. The Green Farms Subdivision is to the east of Rich Hatchet Road.
 - c. To the west: Highway Commercial (HC) and Neighborhood Center (NC); properties are used for civic (North County Regional Library) commercial, retail and office uses.
9. The Neighborhood Meeting was held on Tuesday, March 3, 2009. Meeting summation and attendance list are attached (Attachment A).
10. One protest petition has been received by the Town Clerk. The deadline to receive petitions is April 15, 2009. All protest petitions will be sent in the Town Board's Friday Packet.
11. There are twenty (20) proposed buildings; six (6) carriage units and fourteen (14) apartment units.
12. All apartment units front a public street with the exception of Building 1(southern most building on Rich Hatchet Road). The developer is requesting a waiver from this requirement.
13. The site will be accessed from Holly Crest Lane and Rich Hatchet Road. The developers will build an additional public street. They are also proposing to set aside an easement area for parking lot connectivity at the north of the property (See Transportation Issues for more detail).

14. The conditional district plan dictates that this property will be used for multi-family housing. Prohibited uses include boarding or rooming houses, conference facilities, congregate housing, hotels, cemeteries, commercial marinas, neighborhood gasoline stations, parking lots as a principal use, fast food restaurants and marinas as accessory to residential uses.
15. The applicant is seeking a concurrent subdivision sketch plan approval.
16. The developer has indicated that they will be using plazas to meet their urban open space requirements. These plazas proposed by the applicant do not meet the definition of plaza (see Site Plan Issues).
17. There is one 30' SWIM buffer located on this site.
18. No flood plain is present on the site and the property is not located in a protected watershed.
19. There are 39 specimen trees on the site and the developer is required to save 30 percent. The developer is proposing to save twelve trees (30%).
20. The development is required to have a twenty (20) foot buffer along residentially zoned property. There is one area where this buffer is not met.
21. Public water and sewer will be provided through the extension of existing Charlotte-Mecklenburg utility mains.
22. This plan has been reviewed by Mecklenburg County LUESA (Engineering) office; however a Stormwater Concept Plan has not been approved at this time.
23. The developer is requesting six (6) waivers that are discussed in the Zoning and Site Plan Issue Sections. The waivers are in ***bold italics***.

ZONING ISSUES

Qualifying for Traditional Neighborhood Development-Urban Zoning District

Minimum size for a Traditional Neighborhood Development-Urban (TND-U) is 40 acres and the applicant requests 24 acres to be rezoned. TND-U districts less than 40 acres are allowed subject to the following:

To allow for the gradual accretion of a TND, which may include the participation of several property owners over an extended period of time, a partial TND of less than the minimum number of acres may be considered for approval, so long as the project shows an integrated design for at least the minimum size and the potential to become a TND-U of at least 40 acres..." (Article 3.2.11 e).

The developer has submitted Enclosure 1 as evidence of complying with the above requirement. Staff does not feel this exhibit demonstrates the potential of a future 40-acre TND-U area consistent with the TND design provisions. For example, the average perimeter of all blocks within the TND-U should not exceed 1,350 feet. The average permitted block length as shown in Enclosure 1 is 2,630 feet or nearly twice the recommended average block perimeter size. **The developer is requesting a waiver of he average perimeter block size.** Staff is opposed to this waiver.

Future Development Pattern on Rich Hatchet Road

R09-01 will set a precedent of TND development in the Rich-Hatchet community. With three story buildings along Rich Hatchet Road, it will be unlikely that single-family development will continue as the development pattern which was recommended by the NC 73 (Sam Furr)/US 21 Small Area Plan. Further, redevelopment potential of the three single-family homes on the northern side of Rich Hatchet Road will be difficult because of their small lot sizes and high intensity development surrounding the properties.

SITE PLAN ISSUES

Respect Spacing, Mass, Scale and Frontage of Existing Buildings

Along Rich Hatchet Road, the developer proposes to place the side of three, three-story apartment buildings adjacent to four single-family homes that are one-story each facing Rich Hatchet Road. These apartment units are approximately 28-33 feet from the street right-of-way and the existing homes along Rich Hatchet are setback approximately 45-105 feet from the street right-of-way. The building height, scale, setbacks and frontage are inconsistent with Article 3.2.11.d) 1 of the Zoning Ordinance which requires new development to respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings. Staff recommended to the applicant that single-family homes be located along Rich Hatchet Road in accordance with the approved plans for the area (NC73 (Sam Furr)/US 21 Small Area Plan and the Rich Hatchet Road Plan). Staff also suggested to the developers that if they insist on apartment units along Rich Hatchet Road, they should be one or two story units transitioning to higher units once interior to the development.

Urban Open Space

The developer is proposing to use plazas to meet their urban open space requirements. These plazas are located adjacent to the amenity areas for the site (Site Plan Architectural Sheet pg 1). These amenity areas are attached to the apartment building and used for accessories uses such as health center, leasing and management office, mail room, laundry, café, home office flex units, etc.

A plaza is defined as, "an open area adjacent to a civic or commercial building" (Zoning Ordinance, Article 7.10.5, plaza). These buildings are apartment buildings type and do not fit the definition of a civic or commercial building. Although these plaza areas are attractive and are well situated in the development, they do not meet the definition of a plaza. ***The petitioner is asking for a waiver from the plaza definition.*** Staff does not support this waiver as staff feels that there is a way to keep these common open space areas and incorporate a different type of urban open space into the site.

Height

The developer of Holly Crest Apartments is requesting a waiver to allow buildings to be up to four (4) stories or forty-eight (48) feet in height. This waiver does not apply to the buildings along Rich Hatchet Road which are limited to three (3) stories. Staff does not support this waiver because the four (4) stories increase the intensity of the site. The NC73 (Sam Furr)/US 21 Small Area Plan recommended medium density residential that would be a buffer between commercial and office uses to the north and west

and single family at Rich Hatchet Road. Three (3) stories is appropriate for internal to the project. One to two story heights are appropriate for buildings along Rich Hatchet Road.

Side Yard Parking

The developer is asking for a waiver to allow side yard parking. The Apartment Building type only allows rear yard parking. All apartment complexes approved after 1996 have rear yard parking. Staff does not support this waiver because it would set a precedent in the Town. If the developer would reduce the intensity of the proposal, side yard parking would likely not be an issue.

The developers have also not supplied staff with information about the types of units (1bedroom, 2 bedroom, etc) they will be providing. This information is needed to assess whether the parking shown is the amount that is required by Article 5 of the Zoning Ordinance.

Frontage Issues

Seven (7) of the buildings front a pedestrian way rather than a public street. The Zoning Ordinance allows buildings to front features other than a public street with a site specific design (Zoning Ordinance, Article 8.1.4). **The developer is requesting a waiver** rather than designing the site to include one of the options outlined in the Zoning Ordinance. Staff does not support this waiver.

Staff recommends single-family residential along Rich Hatchet Road. But, if multi-family were allowed along Rich Hatchet Road, staff would prefer Building 1 to front Rich Hatchet Road.

Density

A condition to the site plan is that density is for this project limited to 19 units per acre. There are eleven comparable apartment complexes in Huntersville whose densities range from 9.8 units/acre (Colonial Grand) to 15 units/acre (Summit Sedgebrook). The average density in Huntersville for apartment complexes is 12.9 units/acre and the developer's request represents a 47 percent increase in density to existing apartment complexes.

HVAC Units

The developer is asking for a waiver to allow HVAC units to be placed along the streets and staff does not support this waiver as written at this time. A TND development is a pedestrian-oriented development. Having the HVAC units along the streets does not create an inviting public domain. Staff has supported waivers for HVAC units along public streets in a previous case, but these instances were site specific, required screening and required approval by the Planning Director. If the applicant can be more specific about their needs, staff may support this waiver.

Buffers

Where a new residential development abuts existing residential uses, a 20' vegetated buffer is required (Zoning Ordinance, Article 7.5.3). The 20' buffer has not been met along the northern most parking lot on Rich Hatchet Road and only a 15-foot buffer is shown.

Additional Comments

On the last revision the developers added the note that, "Garages may be added or removed in the place of the dwelling units during the final architectural design phase on non-street front facades of buildings". Staff is concerned about this note as it could increase the density to add more residential units. Further, there may be design issues and the units may not conform to frontage requirements of the Zoning Ordinance.

TRANSPORTATION ISSUES

Traffic Impact Assessment Mitigation

A traffic impact assessment (TIA) was required for this rezoning as it met the trip-generation threshold for both peak and daily trips (i.e. 50 peak; 500 daily). The TIA was completed using the Town's Intersection Capacity Utilization (ICU) methodology and the intersections studied are enclosed (Enclosure 3). Ramey Kemp and Associates, the consultant hired by the Town to perform the traffic impact analysis, was given direction by the Town regarding traffic analysis assumptions/parameters. At this time, it appears all residential development driveways will be right in/right out onto NC73, thus no further analysis is required at this time. Based on the Holly Crest TIA dated March 2009, the following improvements are required by the developer based on the current ordinance:

Intersection of NC 73 at Rich Hatchet Road/Northcross Center Court

- Restripe the existing westbound right-turn lane on NC 73 to a shared through/right-turn lane. Construct an acceptance lane on the westbound departure of NC 73 to accept the shared through/right-turn lane. (Acceptance lane length to be determined by the Town and NCDOT.)
- Construct an exclusive northbound right-turn lane on Rich Hatchet Road with 275 feet of storage.
- Installation of split phasing on the northbound (Rich Hatchet Road) and southbound (Northcross Center Court) approaches subject to NCDOT approval.

*Intersection of NC 73 at I-77 Southbound Ramp

- Construct an exclusive southbound left-turn lane on the I-77 southbound ramp with 400 feet of storage.
- Extend and restripe the existing southbound left-turn lane on the I-77 southbound ramp to be a shared left/through/right-turn lane with 375 feet of storage.

*Intersection of NC 73 at I-77 Northbound Ramp

- Restripe the existing westbound right-turn lane to a shared through/right-turn lane. With this restriping, additional westbound restriping on NC 73 for the acceptance lane is needed.

*Intersection of NC 73 at US 21

- Construct an exclusive southbound left-turn lane on US 21 with 175 feet of storage.

An increase in ICU of two percent or less was reported at the last three intersections of the above list (indicated with *). An increase in ICU of two percent or less may be considered negligible, depending on the intersection location or other traffic analysis assumptions, and therefore would not require major transportation improvements by the developer (addition of turn lanes, etc.). Currently, Town Staff is proposing language to change Article 14, Traffic Impact Assessment, which would allow engineering staff to use their professional judgment as to whether improvements that increase ICU at an intersection by two percent would be required. As the last three intersection improvements represent two percent or less increase ICU, staff would support the TIA Mitigation plan with language to allow staff the flexibility to waive the requirements

For this project to be approved, the Board must approve a mitigation plan. Transportation improvements have been identified and the developer is still reviewing the mitigation plan. Until the text amendment is approved, the developer's options are to 1) commit to providing all of the improvements outlined in the TIA as listed above except if the text changes to allow greater flexibility by staff or 2) place this development on hold (delay in the rezoning request or other request by the developer) until the text amendment is approved.

Road Design and the Small Area Plan

The NC 73 (Sam Furr) /US 21 Small Area Plan recommended that the majority of the traffic movement be redirected to a new road so that there would be lower volumes of traffic in front of the existing single-family homes. Map is provided below.



Illustrative Plan: Framework for growth that preserves homes, creates new development, and integrates community with the Town.

Map 2: NC 73/US 21 Small Area Plan *Rich Hatchet Road*

The Small Area Plan proposed two connections to Rich Hatchet Road, just south of the commercial property on the corner of NC 73 and Rich Hatchet Road and mid-block from US 21 to the bend in Rich Hatchet Road. During the charrette and approval process, the community spoke against having an additional connection to Rich Hatchet Road as they did not want the additional traffic on the existing road.

The Holly Crest Apartment site plan shows the connection proposed by the NC 73/US 21 Small Area Plan but the developer does not control the property that makes the connection to Rich Hatchet Road. The developer is proposing an additional connection to Rich Hatchet Road by extending Holly Crest Lane to Rich Hatchet Road. Although Transportation Staff sees value in the additional connection to Rich Hatchet Road, Planning Staff feels the more appropriate location would be farther north because the connection recognizes the community's desire to maintain single-family development along Rich Hatchet Road. Connecting Holly Crest to Rich Hatchet Road (as shown on the conditional site plan) will create the maximum traffic impact to Rich Hatchet Road. By stubbing the northern location of Street A to an adjoining property rather than making the connection to Rich Hatchet road, diminishes all development potential of the property. If approved, it is most likely that the public would have to buy the property in order to make this connection.

Road Design of Internal Street

As discussed above, the road shown on the Holly Crest site plan as Street A becomes the new north/south through movement. This road needs to be designed to the Residential Town Street standards instead of the proposed Residential Neighborhood Street standards. Street A should be designed at a 30mph design speed (25mph posted speed limit) with a minimum of a 195' curve radius. The proper design specifications are not shown in the street cross sections of the site plan and designing to the standards shown on the plan will be unsafe.

Creek Crossing

Staff has concerns about the creek crossing location for Street A. The street could be located to avoid the need to cross a SWIM buffer by moving the road further to the east. Additionally, the street location as shown on the site plan would require that the full cost burden of designing and building the creek crossing be borne by the adjacent property owner which is a relatively small piece of property.

Road Design of Rich Hatchet Road

Currently, Rich Hatchet Road is an 18' wide, state maintained road. The developer is required to upgrade their side of Rich Hatchet Road and this is shown on their plans. Because NCDOT will require an overlay of Rich Hatchet Road where improvements are installed, staff requests that the developer upgrade the both sides of the road in front of their property. The recommended cross section would be two 10' lanes and a planting strip and sidewalk on their side of the property (as shown in their plans) and a ditch section on the opposite side. There is an existing 60' right-of-way on Rich Hatchet Road

Connections to Adjacent Sites

The developer's response to staff and neighbor concerns about connectivity to the parking lots of the office areas to the north of the site is shown on the site plan. However, this connection is to an empty lot. Staff would recommend that this connectivity take place between Holly Crest Apartments and existing office buildings just west of the proposed connection.

Transportation Planning Issues

An alternate location for staging of the CATS buses is needed when the quadrant left treatment is in place for the NC 73/US 21 intersection. Currently the buses are located on Holly Point Drive. Staff and CATS would like the future location to be on Holly Crest Lane adjacent to the library however, the buses need a place to turn around once the staging location is moved. Transportation staff has approached the developer about a temporary turn-around on their property as an interim measure. Staff would like the long-term solution to be a traffic circle in the center of this development where Holly Crest Drive crosses Street A. The additional benefit of the traffic circle is that it could be used as an additional traffic calming for the road that will hold the future north/south through movement. The developer has stated that they are willing to work with the Town if the Town contributes to the construction of the public streets in their project.

PLANNING STAFF ANALYSIS

Article 11 Section 11.4.7(d) of the Zoning Ordinance states that "in considering any petition to reclassify property, the Planning Board in its recommendation and the Town Board in its decision shall take into consideration any identified relevant adopted land-use plans for the area including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents".

STAFF COMMENT:

- NC 73 (Sam Furr)/US 21 Small Area Plan (January 2006) and Rich Hatchet Plan (August 1998). Holly Crest Apartments is not consistent with both of these plans.
 1. Rich Hatchet Plan recommended single-family in this area. The community recognized the need to study the Rich Hatchet area again and it was included in the NC 73 (Sam Furr)/US 21 Small Area Plan.
 2. Both plans recommended single-family residential along Rich Hatchet Road and the proposed development would allow three (3) story multi-family units.
 3. Medium density residential is recommended in some of the area by the NC 73 (Sam Furr)/US 21 Small Area Plan. The intent of the medium density residential is to provide a gradual transition from office and commercial uses at Holly Point Drive and NC 73 to the single-family use at Rich Hatchet Road.
 4. The roadway network is not consistent with the street network in the NC 73 (Sam Furr)/US 21 Small Area Plan. This proposed development would allow an additional connection to Rich Hatchet road that was not supported by the community. The additional connection to Rich Hatchet Road will create additional through traffic which was not the intent of the small area plan for Rich Hatchet Road. The connection as shown to Rich Hatchet Road needs to be made at the angle proposed because in the long run when the connection is built it will take pressure off existing Rich Hatchet Road.

- Holly Crest complies with the Huntersville Master Greenway and Bikeway Plan as there is no proposed greenway or bikeway on this site.

Article 11 Section 11.4.7(e) of the Zoning Ordinance states that: "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.

STAFF COMMENT:

Redevelopment is proposed in this area, but not to this intensity and scale. The NC73/US21 Small Area Plan called for offices closer to the intersection of NC 73 and Hwy 21 and medium density residential to gradually transition to single-family residential along Rich Hatchet Road to be consistent with the existing development along Rich Hatchet Road. Holly Crest Apartments is an extremely poor attempt to blend into the Rich Hatchet community.

Holly Crest Apartments has a density of 19 units/acre and includes a note in their plan that they will not exceed this amount. There are eleven apartment complexes in Huntersville whose densities range from 9.84 units/acre to 15.02 units/acre. The average density in Huntersville for apartment complexes is 12.85 units/acre. This is an 47 percent increase in density to the developments that have already been approved.

The 5 single-story single-family homes remaining on Rich Hatchet Road face the public street. The proposed development places the sides of three-story apartment buildings along Rich Hatchet Road. This will have a significant change to the street pattern along Rich Hatchet Road. The building intensity and the building orientation along Rich Hatchet Road represent a complete lack of respect to the existing development as required by Article 3.2.11 d) 1.

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.

STAFF COMMENT:

- Petition R09-01 was subject to the Town of Huntersville Adequate Public Facilities and Transportation Impact Assessment (TIA) ordinances. The developer was granted an Adequate Public Facility (APF) Allocation is for 420 units on September 30, 2008. The developer is requesting 456 units. They have included a note on their plan that they will request an additional Determination of Adequacy for the remaining 36 units prior to construction.
- Charlotte Mecklenburg Utilities has provided a Willingness to Serve Letter.
- Staff received comments from Charlotte-Mecklenburg Schools (CMS). For 456 multi-family units, the development would generate 70 new students. The Huntersville School Advisory Committee met on February 9, 2009 and the Committee has significant reservations about the Town Board approving the conditional rezoning request as the increased demand on Huntersville schools will negatively affect the quality of life for Huntersville residents. (Attachment B)
- The Fire Department continues to review this project for compliance.
- A Post Construction Concept Plan has not been approved by Mecklenburg County LUESA (Engineering).

3. Whether the proposed reclassification will adversely affect a known archeological, environmental, historical or cultural resource."

STAFF COMMENT:

Planning staff has no indication that the request will adversely affect known archeological, environmental, historical or cultural resources.

STAFF RECOMMENDATION

Staff does not support the rezoning request for the following reasons as explained in detail above and summarized below. Staff also does not support the waivers as written associated with this site plan.

- Holly Crest Apartments does not meet the design and development provisions to qualify for a TND-U Zoning District. (Zoning Ordinance, Article. 3.2.11). The applicant has not demonstrated a gradual expansion of the minimum size for a TND-U in compliance with the TND development provisions. The development exceeds the block perimeter required in the design provisions.
- Approval of the rezoning will set precedent for TND development in the Rich Hatchet community and this new development pattern will conflict with approved plans.

- The building intensity and orientation along Rich Hatchet Road represent a complete lack of respect to the existing development on Rich Hatchet Road. (Zoning Ordinance, Article 3.2.11 d) 1).
- The proposed urban open spaces do not comply with "plaza" definition (Zoning Ordinance, Article 7.10.5).
- Staff does not support the height waiver to allow four story buildings.
- The developer has not provided information to assess parking and therefore does not comply with the off-street parking standards (Zoning Ordinance, Article 6). Staff does not support the side yard waiver.
- The developer is requesting a waiver to have buildings without street frontage. Staff does not support this waiver as there are other alternatives provided in Article 8.1.4.
- The proposed development is proposing a density that is not consistent with the overall character of the area and will be a 47 percent increase in density to existing apartment complexes in Huntersville. (Zoning Ordinance, Article 11.4.7 e) 1).
- Staff does not support the HVAC waiver as written.
- The developer has not committed (per plan or mitigation documents) to any of the required improvements from the Transportation Impact Assessment (Zoning Ordinance, Article 14).
- Holly Crest Apartments is inconsistent with approved NC 73/ US 21 Small Area Plan and Rich Hatchet Plan in terms of street design and land use (Zoning Ordinance, Article 11.4.7 d).
- Street A within the development is not safely designed for the traffic capacity it will handle and. (Zoning Ordinance, Article 5).
- Staff recommends relocating Street A to avoid crossing the creek and impacting the SWIM buffer.

There are numerous remaining site plan and planning issues that staff will need to resolve with the developer if this request should be approved. These include but are not limited to:

- Coordinating the relocation of the CATS staging area
- Approval of the Stormwater Phase 2 Concept Plan approval
- Defining of block face
- Providing detail for the pedestrian way
- Providing the requested additional information such as floor plans of the carriage units, number of units within each building and the types of units.
- Showing landscape buffer width on plans and contents of the buffer.
- Adjusting the parking lot connectivity.

STATEMENT OF CONSISTENCY

Per the North Carolina General Statutes § 160A-383 and Article 11.4.7 b-d of the Town of Huntersville Zoning Ordinance, rezoning actions must be accompanied by a *Statement of Consistency*. Two statements are provided below that need to be incorporated into the motion either to approve or deny the petitioner's request.

[Approve]

In considering the proposed rezoning of Petition R09-01, Sam Furr Station located in the 9711, 9929, and 10027 Rich Hatchet Road which is approximately 24.04 acres, the Town/Planning Board finds that the rezoning is consistent with the Town of Huntersville Community Plan and other applicable long range plans. We recommend amending the Zoning Map for Rezoning Petition R09-01 from Neighborhood Residential (NR) to Traditional Neighborhood Development-Urban Conditional District (TND-U CD). It is reasonable and in the public interest to rezone this property because..... (Explain)

OR

[Deny]

In considering the proposed rezoning of Petition R09-01, Sam Furr Station located in the 9711, 9929, and 10027 Rich Hatchet Road which is approximately 24.04 acres, the Town/Planning Board finds that the rezoning is not consistent with the Town of Huntersville Community Plan and other applicable long range plans. We recommend denial of Rezoning Petition R09-01. It is not reasonable and not in the public interest to rezone this property because..... (Explain)

Ms. Hodges pointed out that seven protest petitions have been filed. Five of those are valid.

Commissioner Sisson asked is the Small Area Plan referenced the same Small Area Plan we had a discussion about several weeks ago where the Rich Hatchet residents stated they had no input into it and they would prefer that we go back to the old Small Area Plan. And is this where we instructed staff to start moving forward on redeveloping the Small Area Plan?

Ms. Hodges said the old Small Area Plan calls for all single-family.

Jack Simoneau, Planning Director, said we had suggested to relook at it, but staff also said there was input from the residents. Whitney pointed out how the plan changed because of that input.

Commissioner Sisson asked we are acknowledging the approved plan, not the adopted plan?

Mr. Simoneau said right, and Bob Blythe can address the issue of approved versus adopted.

Commissioner Sisson asked the road that leads to Rich Hatchet that goes out to 73, the upper right-hand corner of that plan, is it staff's expectation that if this is approved the developer will do that connection?

Ms. Hodges said they don't own the property. Our expectation is that connection needs to be made. We are saying it needs to be here in order to preserve single-family. I don't think staff could come out and say you have to go buy that property.

Commissioner Sisson asked between where the connection ties into Rich Hatchet and Highway 73, what's the distance between those two?

Ms. Hodges said if you've got another question I'll get back to you on that one.

Commissioner Sisson said the proposed traffic circle in the plaza area..... I'm going to ask you to go into a little more detail on what you want to do there. You are saying that you would like to see a traffic circle in there so the CATS buses can come down and turn around.

Bill Coxe, Transportation Director, said there are three reasons for a roundabout at that location. The first reason is that when that road becomes the through version of Rich Hatchet at whatever point in the future that occurs and then when Holly Crest comes past the library and ties into that roadway, there is going to be a very substantial amount of traffic using that intersection. A roundabout is an appropriate capacity treatment at that intersection and an appropriate safety treatment at that intersection. From that standpoint long-term it makes a great deal of sense to do that. From the standpoint of the CATS Village Rider opportunities, in order to move them off of Holly Point Drive and get them out of the way of the operation of the quadrant roadway intersection, we are looking for a place to put them. Holly Crest was an appropriate place to put them, but they have to be able to turn around to stage to come back out onto Holly Crest. They will come in from 21, they will use Holly Crest and on a temporary basis they could turn around in the cul-de-sac and come back and stop so that they discharge riders and drivers towards the library itself and then when they leave they can come out and go back up and then use 73 as they do today. Assuming that this development or some other development occurs here, that intersection with the roundabout could serve as that same turnaround and that would no longer be necessary. In my mind, that's a short-term fix. That land reverts to the landowners at whatever point the long-term fix is put in place.

Commissioner Sisson asked could you not just stage pick-up of the CATS buses at that plaza? If they come down Holly Crest and make that circle, they are going back out onto Holly Crest, they are going up to 73, they are making a right turn on 73, a right turn on Rich Hatchet and coming right back through there anyway to go south.

Mr. Coxe said they can certainly do that. You don't want to actually stop a vehicle in the immediate vicinity of a roundabout. The whole functionality is that you need to be able to move through it easily. That really wouldn't work from a roundabout operation standpoint. Secondly, the staging area serves as a point where CATS buses catch up to their schedule. In the operation of a transit system, you never want to leave a bus stop before you tell people you will. They actually have a point where they just have to sit and wait to catch up with their schedule and that's where they do it. Also, the driver needs a place

to be able to go out and take a break and the public library serves as that purpose for them today. Finally, the riders and users of the system themselves have benefits in being at that location. There are information sources in the library that they can benefit from while they drop off. That's a really good place from a CATS standpoint to stage them.

Commissioner Sisson asked how many riders are we dealing with?

Mr. Coxe said I can go pull the numbers, I don't have them off the top of my head, but it's a reasonably successful operation.

Commissioner Sisson said I didn't think it was all that successful.

Commissioner Lucas said there's a difference between car traffic coming down and hitting that roundabout and a CATS bus going to that roundabout.

Commissioner Sisson asked what size roundabout are we talking about?

Mr. Coxe said essentially a roundabout is built such that any vehicle that's legally allowed to use the roadway network can use it. MacAulay is way larger than what's necessary for a roundabout. Normal dimension is about 130' diameter. MacAulay is probably double that – around 210'.

Commissioner Sisson said the curve radius on the street on the realigned Rich Hatchet.

Mr. Coxe said the curve radius that you see there would not support a 25 mph speed limit. Our belief is that you need a flat enough curve to be able to safely maneuver it at 25 mph and that was too sharp.

Commissioner Sisson asked what would it support?

Mr. Coxe said 15 mph to 20 mph as I recall. That's Neighborhood Residential, I'd have to look.

Commissioner Sisson said so it's an excellent traffic calming device in a high density neighborhood.

Commissioner Jeter said that's an interesting spin.

Mr. Coxe said only if the entire street leads people to drive that speed. If the entire street does, that's okay and then you would need to post it at either 15 mph or 20 mph, whatever the appropriate speed limit is.

Commissioner Sisson said two eventual curves in the road and a roundabout sitting in the middle.....is it feasible for anyone to go 25 mph?

Mr. Coxe said certainly not over 25 mph, no.

Ms. Hodges said the design speed for what this is showing is for 20 mph, which means the speed limit is 15 mph.

Commissioner Lucas asked what is the speed going through Birkdale Village?

Mr. Coxe said Birkdale Commons Parkway, I don't remember what the speed limit is. I'll find out for you.

Commissioner Lucas said the only reason I'm making the comparison is these streets have parallel parking along the streets, which almost mimics Birkdale and that would be about a 20 mph to 25 mph, would it not?

Justin Carroll, Traffic Engineer, said in the commercial area of Birkdale I would suggest that speed is probably a 15 mph design speed. What we see here with this proposed Rich Hatchet Road is more of a higher collector type street rather than a residential type street.

Commissioner Sisson asked is there some type of rules or informal rules about having a 20 mph or 25 mph speed limit on a collector type street?

Mr. Carroll said you look at the access points along it and you look at the number of driveways. In this case, since you just have major road connections instead of individual driveways, I think in looking at the volume and the access you would want at least a 25 mph or 30 mph speed limit.

Commissioner Sisson asked do you also look at building orientation, streets and parking and things like that?

Mr. Carroll said sure, that does have a factor in it also.

Ms. Hodges said the answer to Commissioner Sisson's previous question is 300'.

Commissioner Sisson said when that road comes in we are going 300' and the TIA is suggesting they build a 275' right-turn lane, so you are going to come out of that curve and there will be a right-turn lane as soon as you come out of the curve – 25' goes really quick.

Mr. Carroll said assuming that curve is continuous and it exists and is built through that property. Assuming that is continuous, that would be no different than any other intersection of a road with a turn lane.

Commissioner Sisson asked is there not in the 73 Widening Plan a part of the plan to put a right-turn lane off of Rich Hatchet onto 73?

Mr. Carroll said it is not.

Commissioner Sisson said that needs to be fixed.

Mr. Coxe said we were surprised to find that out.

Commissioner Sisson said we are talking again about HVAC units being relegated to a certain location on the building. We had this discussion with the Glenwood project and was staff not looking at a way to allow builders and developers more flexibility with the placement of their HVAC units.

Mr. Simoneau said you had asked us to do that and we do have that on our work program for this year. We have not started.

Commissioner Sisson asked the side-facing units on Rich Hatchet, your suggestion is that they face Rich Hatchet?

Ms. Hodges said my suggestion is they be single-family.

Commissioner Sisson said I'm assuming that market is determining whether it will be single-family or multi-family.

Ms. Hodges said if not that, then to face Rich Hatchet. There's other opportunities also to move those carriage units.

Commissioner Sisson said don't they run into a dilemma where the front of their building has to face the public street and they have two public streets there, so which one should they actually be facing.

Ms. Hodges said they do run into some of that, but I think with an apartment complex you have a lot of design flexibility in that in order to be able to do that.

Commissioner Sisson asked has there been any sort of tree study done to see what type of treescape would be in front of the apartment buildings to buffer them from Greenfarm?

Ms. Hodges said they have proposed a buffer detail along Rich Hatchet Road. It's not required.

Commissioner Jeter said on the small area plans, no surprise, I'm less enamored with the small area plans, as they were voted on by previous boards and one wasn't even adopted. I think we have to consider that as we move forward. As I read through the Staff Report it talked about the neighborhood road of Rich Hatchet as it currently exists and its usage. Did the town not go away from that the minute we put a light at Rich Hatchet and 73 and somewhat in my opinion encouraged people to make that cut? It seems like to me that with that light there we almost encourage people to take a left there at Rich Hatchet and to go south on 21.

Mr. Coxe said I think that it is absolutely and completely fair to say that the addition of that traffic signal at Rich Hatchet has opened it up for more public use outside of the neighborhood. I hope that the counter is that two things will occur. The first is that we will be successful in improving the intersection of 21 and 73 and making it operate properly so that the incentive for people to use the existing Rich Hatchet decreases significantly. The second hope is that we are successful in actually achieving what the Small Area Plan calls for, which is to realign Rich Hatchet Road such that the through traffic would use this road or something similar to this road and the existing Rich Hatchet Road with the single-family houses on it would continue to be a secondary choice for people, but that will take time to achieve that.

Commissioner Jeter asked would this development, should it be approved, accomplish the goal of alleviating the need to go down Rich Hatchet because they would now go down this north/south road that bisects this property?

Mr. Coxe said no, because this technically doesn't really go anywhere yet.

Commissioner Jeter asked if they built the connection in the northeast corner, then you would be more satisfied?

Mr. Coxe said it would be helpful if they built that. It would put you much closer to where we would like to get that traffic to. The ultimate solution is the extension of the new Rich Hatchet to the south.

Commissioner Jeter said what I'm trying to understand is the current state of Rich Hatchet versus what would happen if this project is built or not built versus what happens with the quad-left, which is somewhat intertwined as far as my decision-making goes in this process. If the quad-left is implemented as currently envisioned and this project is approved, do those two things go together in your opinion or not? Does that make the quad-left still in your opinion the most viable solution?

Mr. Coxe said yes. The traffic impact analysis indicates that if we do everything that we say we are going to do out here, the only additional improvement necessary to keep traffic at the standard to which we hold people would be the addition of that northbound right-turn lane on Rich Hatchet at 73.

Commissioner Jeter asked was the Traffic Impact Analysis done based on the quad-left?

Mr. Carroll said yes, all the assumptions that the quad-left was in place.

Commissioner Sisson asked what happens if the quad-left concept doesn't happen? Do they have to go back and re-do the TIA?

Mr. Carroll said I think there would have to be some tweaks to it.

Commissioner Sisson asked what if the quad-left concept was built with some of the modifications that were requested by the Northcross property owners association, how would that affect it?

Mr. Coxe said kneejerk reaction is that the changes that we have seen that we have agreed to shouldn't cause any degradation to the operation of the quadrant roadway. That's why we agreed to them. If it worked under the quadrant as it was initially designed, it should work under the quadrant with those minor tweaks to it. Again, my gut instinct is that there shouldn't be any problems.

Commissioner Jeter asked what is the provision from a developer standpoint if we move the goal post after the fact?

Mr. Coxe said the issue is that any developer may rely on any announced public construction project if that is to be achieved in the next three years and that can be a part of their TIA and that's what has occurred in this case. If we change our public construction program and don't hit that three year window or do something different, we haven't addressed that question.

Commissioner Lucas said urban open space, I really like the concept. I know it's a simple change, but I think I just wanted to get that out there that I like the concept, even though it doesn't fit the pure definition. I believe the definition can be tweaked accordingly. What's the topography of the land out here?

Ms. Hodges said it doesn't necessarily address the additional story and I think I know where you are going with that. It's flat in certain areas and then it rolls to certain areas. From the front they will have

the four stories and from the rear there will be five stories. It would be the same where there are three stories and then four stories in the rear where there are those topography issues.

Commissioner Lucas said if you are talking about single-family over on the right-hand side of this proposed sketch plan, right next to that is going to be a four-story apartment complex. How is that feathering when we are trying to achieve feathering to the single-family homes that are across from Rich Hatchet? I think you just exasperated the problem vice what's being proposed here of going from a four-story to a three-story to a single-family across the road from Rich Hatchet. Now you are going from single-family to single-family to a four-story by taking the right portion of this development out.

Mr. Simoneau said this is the approved plan. At this time what was recommended was your mixed-use going to medium density residential which I wouldn't necessarily call four-story. It might be two or three story and then going to single-family. That was the transition. This was not envisioned to be four-story buildings at this point, it kind of stepped its way up to more intense.

Commissioner Lucas said I guess you just proved my argument. The center part is going to be four stories. Off to the east that faces Rich Hatchet are going to be three stories. And then off to the east of Rich Hatchet is single story, single-family. Am I just not doing the math there in saying that it goes from two, three, four – is that not feathering?

Mr. Simoneau said no. Again, single-family recommended and going to higher intensity as you go further.

Commissioner Lucas said if we put single-family right there right next to it, it's going to be a three or four story apartment. How are we feathering?

Mr. Simoneau said again, recommend three story apartments, so you go one story to three story and it could be two story houses.

Commissioner Lucas said I'm all for relooking at that HVAC. I know it's not in time for this and that we will be addressing it later on down the road, but you know my position.

Mr. Simoneau said I think we were clear on our Staff Analysis that we could work with them on that.

Stuart Mullen said I'm here tonight to represent the petitioner and talk through the issues of this project. Before I talk to some of the issues you've raised here and your questions, I would like to introduce Johneric Emehel, who is a family member, a part owner in the assemblage of properties who will I think be able to provide some depth of perception behind the history of the families and the assemblage of the land and also the history behind UDA and their involvement in the area planning process.

Johneric Emehel, 14031 Laurel Trace Drive, Charlotte, said no one has said anything about the Sherrill family. No one has said anything about the McLaughlin family. No one has said anything about the Potts family. I want to thank Dennis Bunker and Stuart Mullen for giving me the opportunity to give a little insight about the property owners, because I don't want us to be overlooked. I would just like to take a few minutes to give a little history of this property and the family members. It goes back to 1957, my grandfather, the husband of Mary Sherrill purchased 5 acres of land on Rich Hatchet Road. It's the same 5 acres that is now the home of Showmar's. In 1974, after my father's death, my mother Annie

Brown returned home to Huntersville with three young boys under her arm to find a new home. She purchased 15.2 acres on Rich Hatchet Road. The same 15.2 acres that was the future home of Holly Crest. She returned home hoping to someday raise her three boys into men. She was looking for help from, of course, my father Sylvester Brown and other wonderful men like my grandfather Rush Sherrill and other wonderful men who are no longer with us like Mr. McLaughlin, Mr. Ray, Mr. Henderson, Mr. Jetton, Mr. Potts. In 1956 even before my grandfather purchased that land, Mr. McLaughlin purchased 8 acres of land on Rich Hatchet Road, but he worked that land even before then as a sharecropper for somebody else. Two of his children, Eloise Ray and Ms. Stinson will remain on Rich Hatchet Road. They will be the closest members to this community. They will be the ones most impacted by this community and they support it. Their family has been there also over 50 years. Right up the street you have the Potts family – Joan and Priscilla Potts. Their family has owned that land for almost 40 years, if not more. We don't want to be overlooked. We have had over 140 years of history in this land and would ask that you consider that. We are property owners just like everybody else. On May 17 when you vote, and I trust all five of you vote in favor of this, that will still be our land. I know that we have had some protest petitions. The one thing I wish I could do was just turn back the hands of time just a few years so that our neighbors who don't know that this is in fact the best plan for this site could hear what other developers were proposing, even what staff was proposing. Staff, they talk about traffic, but then they still want to put some more retail and commercial on that site. What kind of sense does that make? We have Annie Brown and Ms. Ray who are willing to make financial sacrifices to keep retail out. And now we still have these crazy objections to this plan. This is a wonderful plan. Our families have spent hours, days, working with Dennis Bunker and Stuart Mullen developing this plan. This is not their plan. This is our plan that we are asking you to approve. Everyone wants to know about traffic impact studies, but let's be truthful about the traffic for a moment. We are talking about a residential community. We are talking about an apartment complex. I think it was 1980 there were 1,800 people who called Huntersville home. In 1990, 3,000 people called Huntersville home. Today there are over 40,000. I would be wrong, my mother would be wrong, Ms. Ray would be wrong, to stand in the front yard and say Greenfarm you caused this traffic problem. Just like it would be wrong to say Birkdale caused this problem, because it's not the homeowners. If we want to be truthful about what caused the traffic problem, we all did. And the reason we all caused it, because we want conveniences. We got tired of driving up to Hardee's up the road in Cornelius. We wanted a Burger King in walking distance. We wanted a McDonald's in walking distance. We got a Lowes, but we still weren't satisfied. And I'm saying all of us, because I use all of those myself. We wanted a Home Depot and a Lowes. We didn't want to drive into Charlotte and Mooresville like we did for many years. We wanted to walk and buy our clothes, walk and buy our shoes, walk and buy our lights. That is the cause of the traffic problem. And we are fooling ourselves if we are trying to say an apartment complex is going to contribute to the mess we have made because we are too lazy to drive into Mooresville or Charlotte. The last point I want to touch on is the UDA process, the Small Area Plan. When I heard that presentation, when I read that report, it must have been last Friday was the first time I read that report. All I could do was say wow. I was like were they even at that UDA meeting. No one has even called out the name of the representative for Rich Hatchet Road who served on the steering committee. Her name is Annie Brown. To say there was no input, she served on that committee. Before she even attended the first meeting, of course she talked with her sons, she talked with her husband, and I came to that meeting as well. I came to all the meetings.....90 percent of the meetings I was here. My mother was here at each and every last one of them. So yes you had input. But what they are failing to realize is they are looking at some one page document at the last page of a UDA plan and drawing conclusions. What they fail to do and what I ask is, did they even talk to the steering committee member? Of course they didn't, that was my mother. Did they even talk to the staff representative who dealt directly with my mother and I, Zac Gordon. Obviously not, because if they did they would have known first of all was when they talked

about single-family, that was never our intent. The main thing my mother and I made clear was take those off, we do not want that. What was made clear was do not do anything to devalue our property. Do not do anything to restrict its uses. Do not do anything to bind or tie our hands, because what Zac Gordon was also aware of that they didn't even ask him about was my mother's property was on the market for sale before we even heard anything about UDA. Before this process was completed in the summer of 2005, Mr. McLaughlin's property, the Ray's property, Mr. Potts' property, all the property that has been assembled was already on the market, so why in the world would we do something to restrict our value. Why would you try to paint the picture that we want single-family. That is ridiculous. And another reason for no single-family, for over 10 years developers have been knocking on our door. No one has ever said anything to us about single-family, ever. For the majority of the time we weren't looking, didn't care to hear from them. But no one ever came to us and said that's a nice piece of property, I see single-family. The majority of them have been commercial. We have had a lot of mixed-use. But as I have said, this is a good plan. It takes into consideration of others other than ourselves. The highest and best use that everyone talks about is retail and commercial. We have made sacrifices. I'm going to ask you to not bow to the pressures of a select few. You do represent all of us, 42,000 strong, and we ask that you do not cut our legs out from under us. To put any kind of restriction about single-family makes that land useless. We can't go to a developer and say put single-family homes here. We already know the cost of roads. No one wants to put a single-family home on Rich Hatchet Road and look into the backyard of somebody else and look into the backyard of somebody's privacy fence, to look at somebody else's dogs or big storage building. We have been on Rich Hatchet Road for over 50 years. We have sacrificed, my parents have sacrificed to come up with a good plan. We ask that you consider all of that.

Mr. Mullen said I won't belabor the point on the area plans any further. I will touch on a half dozen or so issues as quickly as possible. One is the characterization of high density. There is absolutely no references that pertain to our proposal that we are aware of nor that staff has presented to us in the ordinance that deals with low, medium, high density or a cap or a reference to a total number of units on a project. Instead the description that was given to us was as long as you meet the requirements of the ordinance for public streets, which we do, urban open space, tree save, and so on, then what the site yields is what it yields from a density standpoint. The analysis that was provided to us back in January to further that point, we find fault with respectfully. There's a list of projects I think the map earlier made reference to them, two of which we took a close look at to try to understand whether or not we have an issue. One was Carlisle at the Park. It has a significant amount of floodplain that's included in that overall calculation to reduce the overall density and likewise Rosedale at Exit 23 has 12 acres of floodplain attached to the backside of that property that's included in the density calculations, as well as townhomes that are at I'm assuming a 6 to 8 unit per acre density that's included in the Rosedale multi-family projection provided by staff. And then lastly within Rosedale, again diluting that number down are one or maybe two BMP ponds that serve the entire 80-acre development that constitutes Rosedale. When you make an apples to apples comparison of our project, which take into account the roads and the areas that are developed for parking and buildings, as well as the urban open space and the tree save area and you take all those components and compare them to those two projects that I just listed, we are perfectly in line with the densities that are in those projects, not to mention the fact that the town just three or four months ago approved development in the outlying areas of town that will or could accommodate 18 units to the acre in what's called a mixed-used node. We are not proposing a mixed-use node here, but what that description and what that reference to density calls out is a relationship to more intense use, Highway Commercial use, which we have, and then a feathering back effect to what's more accurately we think described as medium density residential and high density is saved for transit corridors in the 30 to 50 unit to the acre range. We

simply have a difference of opinion as it relates to what is and isn't high density and this project is medium density if we need to put a label on it.

Commissioner Sisson said so what you are saying is if you take this project and tie it in with the whole Northcross area, you are creating a mixed-use node essentially.

Mr. Mullen said the reference to the mixed-use node simply is in reference to the town's approval of the idea that there be 18 units to the acre. We are not proposing a mixed-use node. We can't. I don't think that we technically meet all those requirements.

Commissioner Sisson said if you take what you've done and you expand that out to the bigger area, you potentially have a mixed-use node, you're just doing the high-density residential.

Mr. Mullen said that's correct. At staff's suggestion we included in our materials the TND block. The TND district demonstrates the retail and commercial uses and civic uses along the commercial corridor, 73 and 21, and our component is now currently as of today the missing component in the description of a TND, which is the multi-family component and there are single-family and then the opportunity to redevelop I suppose as single-family if someone felt that was appropriate on those yellow shaded areas on the plan. So we bring the component that's missing. The compatibility issue is one that we heard from staff in July and specifically that conversation revolved around just a concern about complaints from the Greenfarm residents and in reaction to that concern we immediately went back and said maybe we need to make some modifications to the plan to address the issue of what we were proposing at the time, which were four stories along Rich Hatchet Road, the entire project was going to be four stories, with the exception of the carriage units. Instead we have restricted in our zoning plan those three buildings along Rich Hatchet Road to three stories and also just to take out of the mind's eye the verbal description of what we are hearing just over the weekend....what it shows is what I think was touched on earlier which is a two-story Greenfarm relationship, then we didn't try to characterize the vegetation but there is a healthy amount of vegetation for a lot of those homes that are there in their backyards. We have a landscaping, street tree requirement that's loosely represented there. And then a buffer that's again not graphically represented here because what we wanted to show was the step – the one story transition from our project to Greenfarm. We also as it relates to the compatibility, thought that was kind of a good idea to look at what we did relative to Greenfarm and so we've also looked at Rich Hatchet Road north/south, a profile if you will and the existing homes are flanked this diagram on either end and you see the approximate elevations. Our proposed grades from our plan and Holly Crest Extension would be between these two buildings and so what we have is a comparable width from a ranch-style home to the width that we have designed in our buildings of approximately 70' or so if their ends are perpendicular to Rich Hatchet Road and as you look you see a fairly smooth transition rooftop to rooftop. Again what I've been hearing through the analysis and the feedback is in my mind a situation whereby it seems as though third floor residences in Holly Crest will be looking down past their knees at the doorknobs of folks around them and that's just not an accurate betrayal of the situation and I think this graphic without the landscaping to add to it to further soften the relationship and without the roofs, everybody's got a pitched roof, this demonstrates that there is not a compatibility issue. After putting our plan together and talking to staff we reached out to neighborhood groups within the Rich Hatchet Road community and also within Greenfarm. We had several one-on-one meetings. For those who immediately are adjacent to us we heard real clearly we don't want to provide any feedback because it might be construed as some sort of support. If you address our issues we don't want that to be misrepresented here tonight and so we are not here to suggest that we have their support, but for folks who we did hear from back further into Greenfarm, their feedback to us

specifically was yes, we like the idea of the three buildings being turned perpendicular so that the narrow end of the building is the perspective that fronts along Rich Hatchet Road. Yes, we like the addition of landscaping. The landscaping buffer as staff pointed out is not required in accordance with the ordinance, but we are here tonight to commit to it regardless. I think the urban open space has been discussed. It's important for us to maintain the integrity of what the TND ordinance calls for which is a pedestrian oriented development. This design has been on the plan since July and it wasn't until the past 6-8 weeks that we progressively came to what we now understand is an interpretation by staff that we are somehow not compliant. It seems as though maybe it's driven in part by the desire for a traffic circle but nonetheless the language in the zoning ordinance calls for urban open space within ¼ mile of dwelling units and it also says that the urban open space that's designed has to comply with one of the types of urban open spaces that's described in the ordinance but it can include minor variations. That's the language directly out of the zoning ordinance and so for the fact that we are not permitting in the end caps of these buildings that surround the urban open space which bring life and activity and vitality to that urban open space, we don't permit the bottom floor of those buildings with office and retail space that meets building code for those types of uses. They will be permitted as residential, but they will house the amenities, some of which Whitney listed which will include the leasing and management office, potentially an indoor basketball court, yoga and pilates, work-out facility, mail room and the like. What we have done is create in the heart of our project an outdoor living space for everybody to enjoy and that's more what I would rather talk about tonight than try to defend the plan, but I feel like it's necessary to touch on all these issues. This is the you have arrived feature of the project and one of the reasons that we are excited about this is because I don't think there's a project in town, maybe with the exception of Birkdale which is a completely different project all together that has urban open space that's of a quality and character here. The other point I think on the roundabout is that the use of a roundabout in particular with the quad-left implementation yields the same results. You come out on Holly Crest, turn right on Holly Point and you will be forced to make another right on 73 and you will end up driving eastbound on 73 whereby our contribution and connection to Rich Hatchet here for the short-term, up this direction for the long-term, puts you on a better leg of Rich Hatchet Road thereby allowing left or right turns on Highway 73 and not forcing a bus or whatever else might be headed in the eastbound direction coming from our site or the quad-left southeast quadrant of 21 and 73. It won't force the u-turn, which I think arguably is a turn that most traffic engineers want to avoid. The connection to Rich Hatchet Road is one that we talked about with staff back in February 2008 and the UDA plan to the extent that it is applicable, I'm not convinced that it is relative to its status in town, but if you look closely the conversation that unfolded was a conversation about street network in or around this site. This was prior to us putting forth a site plan which we ultimately did in July of last year and it shows the Showmars connection which is one that staff would like to see implemented if and when that connection can be made. Going to the north just before you get to Holly Crest we were specifically told no that's not an important connection to make. There's a building there and there's topo there and so we don't expect that it's going to be made and in a similar vein but in a more impassioned response we heard that the connection to the north to 73 from our site was strictly forbidden and prohibited because no new driveways are allowed in Huntersville along Highway 73 and so it's on the coattails of should we look at incorporating some of those properties that have frontage along 73 into our plan and we got a resounding no. And so our plan when we submitted in January didn't have a connection. We heard from some land owners to the north that had a conversation with staff which is what has gotten us to tonight which we include in our plan a note that says we will provide the opportunity for these folks to make a connection in what we feel like is the most logical point here if and when they want to make that connection and at their cost and at their effort to go back through this process for themselves. That's the quad plan. Again, a signature design for our project that we don't think is matched by any other project in Huntersville. You've heard about the waivers. I'm glad to field any questions. I won't

belabor the point on any of those. They are in our development proposal. I want to touch on traffic because our assumption is that's the large reason that anybody is here to speak on the matter and we tried to assess our project and its impact on 73 and how could we take an expensive document that, I have to correct you Commissioner Lucas, we actually paid for, the Town didn't. It's a 200-page document that's scientifically extrapolated to pull out any question mark or emotion or assumptions about traffic in and around the site and what we did was we pulled information relative to the 73/21 intersection and I had to go back to our traffic consultant who has been working for the town on the TIA and have these numbers checked a couple of times because it's counter to what we have been hearing and what we've been assuming about our project, which is that it has a significant impact on Highway 73 and the reality is that upon build-out of our project on the horizon year of 2014, trips through the 21/73 intersection, they are just shy of 6,000 trips projected through that intersection. The exact number is 5,949 trips. In the PM peak hour we had 134 trips to the 6,000 that will be out there. So the characterization that the impact is far reaching and significant as though it were a retail or a commercial development on the order of 200,000 sq. ft. which can easily be accommodated on a 24 acre site, we are far and way less of an impact. The AM, the total number of trips is 5,567 trips and we are at 113, so it's less on both accounts.

Commissioner Jeter asked are you arguing that you are the lesser of two evils?

Mr. Mullen said my point simply is that we are less than I think what everybody is here to speak against. I'm guilty of this as well. That's why we asked for the numbers. We pulled them out of the TIA. Those same numbers don't necessarily apply to all the other intersections that we had analyzed, but they are correspondingly the same. There's not an intersection out there where 1,000 trips are added to any of those new intersections.

Commissioner Jeter said I wasn't trying to be disrespectful. I think the gentleman in the green shirt that spoke so eloquently before made a great point, which is I don't think a developer is going to come in looking for single-family developments along this project. If the Town Board is going to allow development, one of the questions we have to ask is which is the greater burden to the residents and that is the commercial or this residential. I think that's a valid point brought up by the gentleman and reiterated by yourself.

Mr. Mullen said we got excited back in July when we supplied staff a copy of the plan and at the end of the meeting we got feedback on two issues. One was the relationship to Greenfarm, which we feel like we've more than adequately addressed. The other is, staff said that this is the best multi-family site that they have seen in the past 6 to 12 months of all the projects that they had seen and they had seen many of them and so we left that meeting excited about the project and our objective which was to continue to work with staff over the coming months, which we have done. This site offers a different and unique product in that most, if not all, of the multi-family projects in Huntersville and the Lake Norman area are two and three story walk-up apartment buildings. With the fourth floor, we add elevators and to that we say that there is an opportunity for folks who whether it's by choice or by necessity, whether it's due to age or just lifestyle choice, we now in effect for purposes of stairs have all bottomfloor units and we are excited about our ability to lease apartments, attract employees for businesses. We are also excited about the meaningful contribution that our project makes we think unmatched by any other project in 2,200' of public road that makes a meaningful connection and establishes future connections, which will alleviate a lot of the concerns that we are hearing and probably will hear about Rich Hatchet Road traffic with the new Rich Hatchet Road diverter. We are excited again about the meaningful contribution that we make and so with the facts, having heard them, we are excited about this Class A project and we

appreciate your time and your favorable consideration and on behalf of the design team I want to thank you for the opportunity.

Mr. Mullen said just for the record I want to enter in a stack of support letters that we have for the project and also the two graphics that we shared earlier. *Refer to Attachment No. 2.*

Bruce Andersen, Planning Board, asked could you characterize carriage units a little more clearly?

Mr. Mullen said they are two-story buildings. They are bottomfloor garage and upstairs apartment units. Doors for entry are here and then also on the zoning front of the building, doors in that location and then the upstairs units are residential and I think they are one and two bedroom units.

Joanne Miller, Planning Board, asked until that road is finished, that little section that they can't make, how is it going to take traffic off of the current Rich Hatchet?

Mr. Mullen said this is the Bailey property. We have talked with the Bailey's as to whether or not they want to participate in this process now and they have said no we want to continue where we are and what we are doing and we've worked hard to respect what we've been hearing all through the process which is for those folks along Rich Hatchet Road that don't want to sell, we don't want anybody to come along and feel as though they are forced out and so what staff asked us to do was, we initially had a stub back here in this location and so we extended that stub with the curve radius on it to the property line and then that connection that staff suggested we make at some point in the future, but for now what happens is the current stub on Holly Crest is substituted with two new stubs, one on the south end and one on the north end and then the connection through is made to Rich Hatchet Road.

Mr. Carroll said the difference would be if that does not connect, then you have the vehicles that are going to travel out and then up Rich Hatchet in this portion. Looking in the AM, you are going to have about 146 new trips traveling this direction and somewhere around 140 some going in and out in the PM. It's just new trips on this portion until this gets connected will you take those trips off of that section of Rich Hatchet.

Commissioner Sisson asked what's the traffic count on Rich Hatchet now?

Mr. Carroll said I believe the ADT was somewhere around 1,000 to 1,100 vehicles a day.

Sam Mount, 10224 Bayart Way, said I am on the Planning Board and I am also the president of the Hamptons HOA. The Hamptons HOA is the boundary of this development and to put into some perspective, there are 373 housing units in the Hamptons HOA. This development is 130 percent of that number in less than 1/6 of the space, so I want you to understand the density required in this thing. We encourage you to deny Rezoning Petition #R09-01, the Holly Crest conditional rezoning, which is requesting a development of 456 apartment homes because the request is not consistent with the current Small Area Development Plan for NC 73/Highway 21, which calls for single-family homes in this area. Secondly, the roadway network proposed is not consistent with the current Small Area Development Plan for NC 73/Highway 21. I was listening to the comments, it's interesting to note I actually thought if they are only adding 110 cars, I suspect there's more than that coming out of the Hamptons and we are a much smaller subdivision. I'm not sure how that math works, but am respective of that. Be aware of the fact that we do not support the requested changes to Rich Hatchet Road, specifically the additional connection required as well as the additional traffic this will bring. Thirdly, the

intensity and scale of this development is not consistent with the established development patterns of the Town of Huntersville to allow for gradual feathering of developments through density degradation. The proposed development is at 19 units per acre. The adjoining development, Greenfarm Road, is at 3 units per acre. The requested height waiver to a four-story structure will be intrusive into the privacy of existing neighborhood developments and private homes. The proposed building orientation along Rich Hatchet Road is completely inconsistent with existing developments in the area. We as a homeowners association met last night and voted unanimously to request that you deny this application and confirm the current zoning of Neighborhood Residential.

James Sherrill, 12518 Kemerton Lane, said I am the property owner of 9600 Rich Hatchet Road. My concern about this project is what type of people are we looking to rent these apartments. Is it going to be low to moderate or Section 8 type people that's going to be renting these? How are you going to fill up these places over here – 456 apartments, that's quite a few apartments and people are going to have to have places to stay. I'm just concerned about the type of people that's going to be living in there. Like Ms. McLaughlin that just left here, she's an elderly person and I'm quite sure we all heard about what happened to this elderly person last week in Charlotte – 84 years old, someone broke into her home. I would like to see the number scaled back. I'm in favor of them developing the land, but I just don't see that number of apartments going in. And also, as Commissioner Jeter stated earlier, the left-turn light there off of Sam Furr onto Rich Hatchet, I think it will increase the traffic on Rich Hatchet Road. If the Town or the State, whoever owns Rich Hatchet Road, would make a no-left turn onto 21, I think that would deter some of the traffic coming through Rich Hatchet Road. If the development is approved, who is going to pay for the road upkeep of Rich Hatchet Road if it's a state road or will the city maintain that road. And also will the homeowners have to maintain the road infrastructure inside of the complex, or would the town take care of that. I'm for the development, but I just think it should be scaled back a little.

Ms. Hodges said the roads here are public roads and those will be maintained by the Town of Huntersville. Any of the parking lot areas and drive aisles, those will be maintained by the developer. Rich Hatchet is maintained by the state.

Sylvester Brown, formerly of 9929 Rich Hatchet Road, now lives at 5916 Cashion Road, said we were forced to leave. We were forced out of our property by mainly the race track. Rich Hatchet is a race track. If you think I'm lying, you come over there and I'll show you. Annie and I stayed over the hill from the McLaughlin's. All the traffic coming off of Sam Furr Road coming down heading south on Rich Hatchet Road just about runs us over. We didn't have no choice but to leave. Besides that, we couldn't even sleep at night. You had dogs barking in Greenfarm and we had ambulances and we had road noises from 21 and 77. You couldn't even open your windows at night. It seemed like those big trucks were coming in your bedroom. And then I think we were paying taxes, but we were not treated as citizens of Huntersville, because we got no benefits. I think we had a president of Rich Hatchet Community Association, John Henderson is deceased. Mr. Henderson came before the town with petitions for walkways and streetlights and speed humps and I guess the speed humps probably run in the neighborhood probably between \$10,000-15,000 per unit, just my guess. That didn't happen. We did get streetlights and then we had complaints from our neighbors across the street in Greenfarm according to Ed Humphries. Ed told me he personally went over there and went upstairs in the bedroom and the lights were shining in the man's bedroom. I said well put curtains up. They took the light down and then they came back and put another little light. Annie and I had three boys that we had to raise, which was good. They got a good education. And the thing not only about the education that makes us so proud of these boys is the fact that they have a personal relationship with Jesus Christ.

After they moved out and all, Annie and I were there by ourselves so we decided that the best interest for us is to get out. So the property is standing there and we will need to get rid of it, since we have been denied the quality of living was taken away from us. I had my cows and I had hogs and everything was just going good. My wife retired from the school system. I retired after 47 years. I thought I had it all laid out. I found out it wasn't going to happen. So all of you here to protest against the petition, let me tell you something, growth is there and it's going to be here to stay. You can't stop it. The only thing I'm saying, please accept the project that has been presented.

Kendra Henderson, 14235 Boren Street, said I'm representing 9819 Rich Hatchet Road, which is my family home. I am the daughter of John Henderson and the granddaughter of Rich Hatchet, who the road is actually named from. That property was originally owned by my great grandfather, Rich Hatchet and another one of my family members who is Mr. Graham and those are the two original owners of that land over in the Rich Hatchet Road/Statesville Road community around in there. I am also the newly elected president of the Rich Hatchet Road Community. I am here to address the rezoning request of Bunker Land Group to rezone 24 acres located at Rich Hatchet Road neighborhood from Neighborhood Residential to Traditional Neighborhood Development – Urban Conditional district. For years the town has heard the concerns from the members of the Rich Hatchet Road community as it relates to rezoning and encroachment upon the neighborhood. Two months ago, despite valid protests and written agreements between the community and the Town Board, a decision was made to violate the written agreement and rezone Neighborhood Residential to Commercial on a small tract at the end of Rich Hatchet Road. There was a 1998 agreement between the Rich Hatchet Road community and the town, which was violated at that time. The remaining residents of the Rich Hatchet Road community would now like to know the current status of the 1998 agreement between Rich Hatchet Road and the town and if there is a plan to develop a renegotiation of those plans. And if so, when will that renegotiation take place. In the meantime, another developer seeks permission to rezone and alter the safety and quality of living within the Rich Hatchet Road community. I along with the remaining residents of the Rich Hatchet Road community have met with the Town of Huntersville several times to request sidewalks, No Cut Through traffic signage, speed bumps, reduced speed limits, and yellow caution lights to help protect us in our community. I, along with the remaining residents of the Rich Hatchet Road community, would like to express our feelings for not rezoning our community and to take every precaution to provide our safety for our families and our standard of living.

Tom Owen, 9900 Mossy Rock Court, said my backyard is Rich Hatchet. I'd like to thank Ms. Henderson for what she had to say. They are good neighbors. I have been living in Huntersville for 17 years. I'd like also to say that as Uncle Sam moved me around the country for a bunch of years, I never had crime problems. I've been burglarized twice in Huntersville. What I'm looking at with 456 apartments coming in across the road is an increase in crime. I certainly don't need that and neither does the rest of the neighborhood. I heard staff, I believe, say that they anticipated 70 students added to the school system. Seventy students/456 apartments, those are awfully busy hard-working people if they don't have more kids than that. The number of automobiles was estimated at a number that I really can't believe because when I was still working I had to go through the Hamptons and turn left on 21 to get out because you can't get out on 73. We are looking at two exits, one on Sam Furr and one on Holly Crest, which runs right into the quad-left situation and if anybody is headed north on 21 during morning rush hour getting off Holly Crest onto 21 is going to be an impossibility, so they are going to get dumped on Rich Hatchet. There's such a concept as a bottleneck and dumping a couple of hundred automobiles at least, probably 400-500, on Rich Hatchet during morning rush hour and afternoon rush hour is going to make it even more of a zoo. And as the gentleman said, it's a race track right now. I talked to the folks in Greenfarm subdivision all of whose properties were within the 100' of the proposed development and

I think with one possible exception, all the names on our petition were from families within 100'. We find no positive benefits whatsoever to the folks living in Greenfarm, on Rich Hatchet or others for that matter from a development with this density. My uncle taught me to if you find a problem, propose a solution. I would recommend that if it cannot stay single-family residential, which was my preference, that at least look at the concept of townhouses or townhouses and a mix of small business. You might wind up with the same number of automobiles on the road during the day, but they would be spread out over the whole working day rather than rush hour morning and afternoon. There's a bunch of other stuff – water pollution and such. That's an open area now that soaks up rainfall. With that much hard surface, you are going to be looking at a tremendous amount of run-off going into a waterway that flows on one side of that property. Basically, all the folks I talked to in Greenfarm oppose this proposal as it exists.

Commissioner Jeter said I would like to clarify a point that the staff is not the generator of those school project numbers. That is actually done by the CMS group and they have a formula that they provide to staff. I will tell you the Huntersville School Advisory Committee vehemently disagrees with the premise that only 70 students will come out of this development. But that is a CMS number, not a town staff number. It's the formula that they use that I believe is not accurate.

Gloria Potts, 9624 Rich Hatchet Road, said I'm the immediate past president of the Rich Hatchet Road Community Association for the last three years. I am responding to the request. We are hearing certainly a lot tonight about the plans for the proposed apartment complex. We as a formal community did not file a protest petition. I think one of the things unfortunately we have seen as a community lately and one of the reasons we didn't quite frankly and I say lately, the last 10 years or so, is that we have as Kendra Henderson has mentioned provided a long list of things that we thought were basic amenities, including sidewalks, including speed bumps, including signs that would help reduce the speed of traffic on Rich Hatchet Road and much of that has gone unattended, so our resolve is that we move to the next step in this, which I think is a key question for those of us who intend to remain on Rich Hatchet Road and fyi I, too, am the granddaughter of Rich Hatchet who this street was named after and that property has been in our family for 100+ years. The questions that I have concerning this are given the plan construction that is being discussed and the close proximity to those of us who intend to remain in the community, what are the safeguards and barriers that will be provided to protect both property and the individuals? What is the plan for handling sedimentation and run-off? What is the specific noise abatement measures that are being planned? There are approximately 1,100 cars traveling Rich Hatchet Road now. I think Whitney Hodges, part of your staff, has already said that the increased traffic has confirmed that it will be problematic. What are the plans to really deal with that issue? Mr. Brown mentioned that it is a race track now. Some of us are taking the stance that we want to better or at least maintain the state that we currently have on Rich Hatchet Road as opposed to leave. For some that is not an option. I want to echo the question that Kendra Henderson raised. Will there be a revisit of the 1998 agreement between Rich Hatchet Road and the Town of Huntersville? I want to address this question. I do want to say that in terms of community input that should have probably taken place over I'm assuming a few years on the Small Area Plan, we have an active community association that meets once a month and for the past three years, there has not been any input on those regular meetings about the steering committee meetings and what was going on with this. That's the reason you see these quizzical looks when we hear the statement that there has been community input. We haven't heard it, not as a group.

Janet Spain, 17607 Cambridge Grove Drive, said Cambridge Grove subdivision is within a half mile of the proposed project for 456 apartment homes on 24 acres, between Rich Hatchet Road and the North

Mecklenburg Public Library. This project will definitely affect our community, as our community has affected the general traffic and congestion in the area. This project is not all together without merit, but it does need some modifications. I think the original plan I saw had a roundabout and I would like to see that again connecting the library on Holly Point to the project and thus onto Rich Hatchet Road. I do like the open gathering spaces that are shown at the four corners of the roundabout and I like the fact that I heard that it would be Class A apartments, which is different from the fear that some had that it would be a much lower level. Class A meaning, of course, the most expensive. One thing that would be great that I heard earlier is that there would be elevators in the buildings, which would make it possible for senior citizens to reside there as well as some with physical restrictions. Also that would mean that these residents could walk to the library, various banks, a spa, and the stores at Northcross, which supposedly would cut down on some vehicular traffic. What I don't like is three or four story buildings fronting Rich Hatchet Road with single-family homes across the street and also surrounding it. We've been talking about feathering the types of buildings, but if this plan is adopted the actual buildings themselves could be feathered on the ends going from two stories and cutting back on apartment length to the third story so that you would have a step effect which would also help with the massing along Rich Hatchet Road. Traffic on Sam Furr Road has already been addressed as being really past maximum density and adding this many more apartments would I feel be an extra burden, but nothing has been mentioned about the intersection at the south end of Rich Hatchet Road. This project will not connect to Rich Hatchet Road in the south, but all of the traffic is not going to go north to Sam Furr Road. A lot of it is going to go south to 21 and that is a very narrow intersection with no turning lane for the left turns and that I think has to be addressed. I also would think that the developer should be required to address the improvements to Rich Hatchet Road that were set out in the 2005 Small Area Plan, which included curb and gutter, sidewalks, and street trees. I think that not only needs to be included in front of his property as well as I would hope left turn lanes into the property if we are talking 456 homes, but I think it should be extended all the way to Sam Furr Road so that those people can walk.

Vernon McLaughlin, said I personally love looking at the diagram, the structure of the buildings, type of buildings. It is very important to have good structure buildings, so looking at the plan, landscaping and I feel that the builders/contractors, all involved, they are very cooperative to meet and I'm sure that anyone else that talked with them would feel the same way. I am very much in favor of the project being completed.

Annie Brown, property owner on Rich Hatchet Road, said I've been there since 1977 and we did rear our kids there who are grown men now. I saw the plan and I was in favor of it from the beginning because ever since I've been on Rich Hatchet Road if I had not moved year before last, I would have a stack this high from developers or wanting to be developers and most of them were retail people. From the very beginning I just started stacking them up, because I don't easily throw stuff away but retail is what most people wanted for that. When I saw this plan, I was elated, because it was not retail. Retail is what causes the biggest problems around here. Wherever there is retail, there's so much traffic until I would stay home and go to the internet and order what I needed to buy instead of trying to get out to go to the stores. I'm very supportive of it and I would encourage you to approve this plan, because there's going to be something there and I would rather have people who are not going to be in and out all times of night than traffic, more and more traffic.

Rush Sherrill deferred his 3 minutes to Terry Sherrill.

Terry Sherrill, 3600 Driftwood Drive, Charlotte, said I grew up here in Huntersville and Huntersville is still my home. They had a VFW post there on Rich Hatchet Road. I'm 53 years old and I remember playing out there. Of course, times have changed quite a bit. And they are going to continue to change. I guess the thing that I get out of what I've heard here is that if you think about what Ms. Henderson, as well as what Ms. Potts have said, being the past president of that neighborhood organization out there is that the folks that are living out there for whatever reason seem right now to be ignored. My sister who lived out there for years I guess got tired of it and since she was one of the ones who got to the place where she could leave, she left. There's going to be some significant changes out there anyway, just as there have been significant changes out there since the time that my dad had that VFW post out there that he and others helped to run and where I played and got apples. It seems like this particular plan is one where the developers have done a lot of work to try to come up with something that is going to be amenable to what's already out there and I think even Whitney said with regards to the waivers, this can be tweaked a little bit or that can be tweaked a little bit and it sounds like with a little tweaking that now is perhaps the time, this is perhaps the plan, that can in fact be implemented. It's going to happen. It's already happening. It's going to happen and so what I suggest to you is if we are talking about a little tweaking to make this thing work and if you look at the whole area, what Mr. Sisson was saying I think is totally accurate with regards to when he was asking Mr. Mullen, are you just talking about this would be a part of the greater area plan or something like this. That's what it is. This is the residential part. This is the multi-family residential part that is missing right now and it can be tweaked so that it can work. I ask you all to consider that because it's going to happen and this is the plan where they have tried to do their best to make it happen in a way that it is compatible with what else is out there right now. The traffic is not getting any better anyway.

Toni Emehel, 14031 Laurel Trace Drive, Charlotte, said I'm the daughter-in-law of Sylvester and Annie Brown, wife of Johneric Emehel. There's been a lot of information that's been given to us tonight. A lot of fact, some things quite not fact, but just personal interjections. I would just encourage this body to err on the side of wisdom. Wisdom is the proper, the right application of the knowledge that has been given and when you do that the only conclusion that you can come up with is approving this plan. Sure, there are some folks here that have some personal feelings, some personal emotions that are against the plan, but from what I have heard none of that has been supported with fact. You've been given a lot of fact from the developers. You've been given a lot of facts from the town staff and again I just encourage you to use those facts to make a wise decision in approving this plan. If there is some tweaking that needs to be done, let's make sure that it's reasonable and that it is supported with fact. I consider myself privileged to have sat in the company of Annie Brown and Ms. Eloise Ray who when they made the decision to put their properties on the market to sell and actually considering the developers that came to them, they did the right application of knowledge that they had based on the facts to approve a developer that would come in with a plan like this that would suit the area. Again, I just encourage you be wise, take the facts, deduce them into logic and approve this plan.

Larry Griffin, Jr., 19053 Double Eagle Drive, Cornelius, said I'm not an adjoining property owner and I don't live in the immediate vicinity of this project, so I'm really not here to speak to the technical aspects of the project. Actually I have seen the project. I think it looks quite nice and fits well. I am a business owner in the community and one thing that has been mentioned is places to live and lifestyle. We have a fair number of our employees who do rent for various reasons – some lifestyle reasons, some who are new to the area just trying to figure it all out. This is a residential component that I think is important to the area. I'm really here to speak to probably Dennis Bunker. I've known Dennis and his family for 30 years now. I've done real estate deals with Dennis. I have no interest at all in this project from a financial interest whatsoever. But one thing I found about Dennis is that if integrity matters and

honesty and treating people fairly and doing what you say you are going to do, then Dennis is the right person for this project. You won't find a person who has those traits better than Dennis.

Bevelyn Sherrill, 13117 Central Avenue, said I'm the favorite daughter of Rush Sherrill and Mary Sherrill. Terry's my baby brother. Rush, Jr. is my older brother. Annie Brown is my oldest sister. Johneric is my nephew and his wife Toni and Clement is my oldest nephew. I'm a social worker by training. I practice social work in Charlotte-Mecklenburg Schools. I heard some things probably that was instilled in me by my parents. Some of you may be familiar with the Principles of Kwanzaa. That's what came to my mind as I sat here. I saw in this project some self determination going on that some of the members of that community have decided they want to self determine what's going to happen. They just don't want the change that my brother referenced, which we know is coming, to come through without them being involved. So I saw some self determination going on in this project. And I would like to thank that developer very much. I saw some creativity going on and also that there was some real purpose in this project. I moved away and went to Westchester County and when Bill Clinton went to Westchester County, I had to come back home. I sat here really proud of this community. When I moved back home I read an article in the paper that said that in 10 years Huntersville grew from a population of 3,000 to 40,000. I was floored by that. And when I came back, I was away for 11 years, Huntersville was really different. Those are some things that I just hear in this plan, that this group of people have come up with a creative way to preserve their community where people that want to remain there can remain there, but those people that have either moved out or want to downsize perhaps or do something with their land, want to determine that for themselves what that land is going to be. The other principle is collective work and responsibility. I think they have done that. I think this Board has no other choice but to support this plan and support this group of people who have lived in the area.

Clement Emehel, Burlington, said I am one of the property owners. I basically approve of this plan. I live in Burlington. Burlington is just like Huntersville. It's a small town. It's growing. Whenever you are going down I-85 look off to the apartments on the right-hand side, on the left-hand side you will see the new bustling mall that's coming up. It's growing. Growth is here and you can have mixed-used, you can have commercial, retail and multi-family homes all in one place. My mother actually purchased the property over 25 years ago. If you go down there and look at some of those trees, if you cut them down and count the rings, there are 25-26 rings because we actually planted half of those trees with our hands, especially the ones around the perimeter of our property. We were there before Greenfarm, before Birkdale, we were there before the exit was even there. When I had to play with my friends, I had to walk at least a half mile before I could play with somebody my age. We watched growth come. Development came and it came fast. It came in consistency with the town's vision. I would never have believed that Huntersville would have grown the way that it has grown. The vision that you have here, even with those apartments, people who worry about the type of people that you might bring in, you don't even know. People like me will come into those places because I have traveled across the world and I've met people who know about Birkdale, who know about Huntersville. I'm sitting there on a plane talking to somebody and they say we pass through there going to Charlotte and we really enjoy that place. I would move here as a young professional and don't worry about crime because I'm not going to stick you up. The one thing about the community itself, we have sat there going through the years of where we didn't get the sidewalks, the traffic lights and those things definitely need to be considered. I met with Dennis and the things that he has done to this plan to modify it, he's adjusted things, he's taken things for consideration. He has worked very well with my mom. Those of you in here who have children probably know that my mom has taught some of your children and the one thing about my mom, you know that she is fair and just. I do believe the same thing about Dennis as a developer. I think development is coming. You had a plan in place. If you look at this plan, the tweaks

that Whitney talked about, she talked about one of the six major tweaks was like a 5' space. Okay, we can adjust that 5' space. If it's the curve in the road, okay we can change the angle just a little bit. If those are some small tweaks that need to be taken care of, take care of it. As the commissioners get ready to vote, what I would do is you know I think your choice is to support the plan. I really do think you should support the plan. I hope that you support the plan. If you have any hesitation in saying yes, I ask you to look at the bigger picture and always consider the bigger picture ahead.

Vic Thompson, 16619 Greenfarm Road, said my largest concern about the project is the traffic. I spent the day doing research. Based on what I found I would expect 323 cars to leave this apartment complex during the morning rush hour and about that many at the afternoon rush hour. That doesn't sound like a whole lot of cars, but when you think about what it's adding to the congestion of that small area, the most congested area in the town of Huntersville is the 21/Sam Furr Road intersection and you are throwing additional traffic in that area. The thing that I haven't heard about is traffic signals. Is there going to be a traffic signal at Rich Hatchet and 21 and that's also going to slow down the traffic coming up 21. You are also going to have to extend the signal length on Rich Hatchet Road to allow the cars to get out and so you are going to have more cars getting stored coming off the interstate. I would like to hear the resolution to those traffic issues, the global issues not just the issues inside the Rich Hatchet area, but the global issues coming off of Interstate 77 and also adding to the traffic on Sam Furr. I stood up here about 4 years ago with the development across Sam Furr from me and that development seemed to be contingent on widening Sam Furr. Sam Furr, as we know, has been a difficult thing to get widened and I fear I guess that this area could get developed without Sam Furr being widened. If that happens, then there's going to be even more traffic to deal with.

Judy McGuirt, 16611 Ranger Trail, said I don't think I've ever been to a meeting like this and I should have taken lessons on how to have fun when I was fighting the Northcross Village. But the main issue is what Vic said, the traffic. Our Town Board let American Asset Corporation put the Village there. I was told by some of the people here that 73 would be widened simultaneously. About 4 years later, not one thing has been done. It's not so much that I'm opposed to the development. What I am opposed to is it being done, completed without the road being widened. It's ridiculous. And I don't know if we are going to get any stimulus money. I hear little things about it. I don't know if it's true. Quite frankly, I don't believe anybody what they tell me, but I would just urge you to think about that – if you approve it, it can't be built until the road is widened. Isn't there anywhere else in Huntersville that somebody can build something other than that quadrant around 21 and 73. We've been dumped on and dumped on and I know Mr. Sherrill talked about they were moving because of the traffic. We live there, too, and they are able to get away, I'm not. We are going to have more traffic, more noise, more everything. I would just urge you if you pass this, put a stipulation that it cannot be built until 73 is widened and improvements made.

Dr. John Ballas, Northcross Professional Park, 9710 and 9718 Sam Furr Road, said I'm representing the Northcross Professional Association. Essentially all we are asking is that the northern part that we have proper easements put in so we will have access to Rich Hatchet Road because with the widening of 73 that will then cut our access off from westbound 73 into our property. If there is access from that area, that's all we wanted to really say. *Letter from Northcross Professional Park Association attached hereto as Attachment No. 3.*

Mr. Mullen said the question about who's going to be living here, this is what should be considered a Class A project. The buildings that are greater than three stories will have elevators in them to serve those upper floors and that's not a commitment that we enter into lightly because there's significant

costs associated with that, but it speaks again to the quality of the project in addition to the urban open space and the fact that all of these buildings because we are in Huntersville, because we have chosen to at least attempt to do business here, are unique and new and have not been built anywhere else and so we are going through a costly process now that we have started and have not yet finished but will to design buildings that don't exist anywhere else and we are excited about that and excited about the project and its contribution to the town and the benefits that the town will reap as a result of its construction.

There being no further comments, Mayor Swain closed the public Hearing.

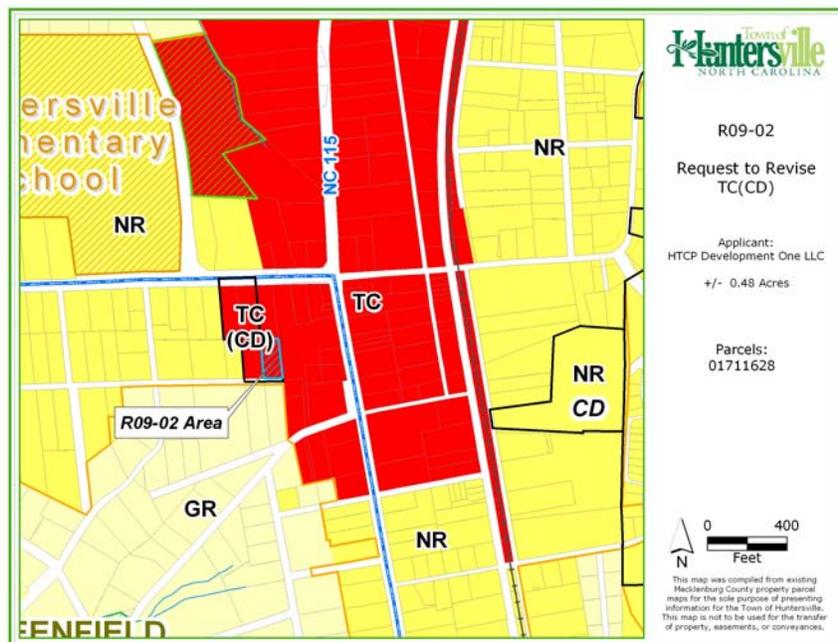
Petition #R09-02. Mayor Swain called to order public hearing on Petition #R09-02, a request by the Town of Huntersville and HTCP Development One, LLC to revise the rezoning of one parcel totaling 0.4 acres located south of Gilead Road and west of NC 115 currently zoned Town Center – Conditional District to accommodate a portion of the Town Center parking deck. *Staff Analysis is below. Other documents related to this public hearing are attached hereto as Attachment No. 4.*

**Rezoning Petition #R 09-02
Town Center Project**

EXPLANATION OF THE REQUEST

Petition # R09-02 is a request by HTCP Development One, LLC to revise the rezoning of one (1) parcel (totaling 0.4-acres) currently zoned Town Center Conditional District (TC-CD) to add a site plan for a portion of a parking deck and driveway access. When the property was rezoned to TC-CD in 2008 it was a condition that the rezoning request would be amended when a development plan for the property was known. This application will add the site plan for a portion of the Town Center parking deck. The parcel is located south of Gilead Road and west of NC 115 (Old Statesville Road).

LOCATION



SITE PLAN DESCRIPTION

1. Parcel ID Numbers: PIN 01711628.
2. Project Size: One (1) parcel, totaling 0.4-acres.

3. Project Size: One (1) parcel, totaling 0.4-acres.
4. The parcel is located downtown on the south side of Gilead Road, between NC 115 and Hillcrest Drive.
5. Current Land Use: vacant.
6. Proposed Land Use: A portion of a parking deck and drive aisle is to be constructed on this site. (see Attachment B).
7. Adjoining Zoning & Land Use:
 - North: Town Center (TC) – vacant;
 - South: General Residential (GR) – vacant;
 - East: Town Center (TC) – vacant;
 - West: Town Center Conditional District (TC-CD) – vacant. .
8. Notifications were sent to adjacent property owners.
9. No protest petitions have been filed for this application as of April 14, 2009.
10. The proposed action does not impact water quality measures.
11. SWIM buffers and/or greenways are not impacted by this action.
12. Flood plains and/or watersheds are not impacted by this action.
13. Public water and sewer is currently serving these sites.

SITE PLAN ISSUES

A commercial site plan has been submitted for the Town Center project (see Attachment A). The site plans calls for a new three-story civic building to be built fronting on Gilead Road and a three-level parking deck south of Gilead Road to serve this building. The building will be used for Discovery Place Kids and Town offices. The site plan has been reviewed by Town staff. As with typical Conditional District Rezonings, the attached site plan will indicate what can be built, with only minor modifications (per zoning ordinance) permitted without going back to Town Board for review and approval.

TRANSPORTATION ISSUES

The Transportation Impact Analysis (TIA) has been completed and calls for intersection improvements – primarily, adding turn-lanes at the intersection of Gilead Road and NC 115. Additionally, pedestrian and bike lane facilities will be added as well.

PUBLIC HEARING

TBD

PLANNING STAFF ANALYSIS

Article 11 Section 11.4.7(d) of the Zoning Ordinance states that “in considering any petition to reclassify property, the Planning Board in its recommendation and the Town Board in its decision shall take into consideration any identified relevant adopted land-use plans for the area including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents”.

All relevant plans were reviewed and referenced when this parcel was first rezoned to TC-CD in 2008.

From the initial rezoning staff report:

There are two land-use plans that relate to this request:

The Downtown Master Plan addresses these properties as part of the Town Center sub-area (Southwest Quadrant). The Southwest Quadrant is envisioned to be a “dense, mixed-use center of the Downtown area...” This area is to include “primarily commercial uses such as retail and restaurants on the ground floors with upper story office or residential”. To the rear of this block (at Gilead Road & NC 115), the Plan recommends the tapering of development towards Greenway Dive and Hillcrest Drive. “This area is presently vacant with two undeveloped right-of-ways (one being a portion of Hollbrook Street) and individual lots. This shows the opportunity for the development of an urban residential infill neighborhood with a variety of housing types and a public open space. “The parcels in question are within the area shown for town center-type development, per the illustrative plan within the Downtown Master Plan. (see attachment A).

The Town of Huntersville Community Plan calls for “innovative development in Old Town Huntersville”. This Plan calls for focusing “innovative development strategies” within the downtown area (as defined in the plan), which includes mixed residential types, offices, educational, governmental and religious establishments, shops, services, restaurants, entertainment establishments and public open spaces.

Article 11 Section 11.4.7(e) of the Zoning Ordinance states that: “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. *These five (5) parcels **including the parcel being revised in R09-02** are immediately adjacent to the Town Center (TC) zoning district and represent a logical extension of the existing zoning.*

- 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. *At this time, public facilities and services are not impacted by this action. Under the terms of the recently adopted Adequate Public Facilities Ordinance (APFO), adequacy of fire, police and recreation capital facilities is determined when a development proposal is submitted and reviewed by the town. In addition, as specific plans are submitted, a Traffic Impact Analysis (TIA) will be required per Town ordinance. Any traffic improvements identified as necessary to mitigate the traffic impacts of the development proposal would be required. This requested conditional district rezoning outlines the parcels to be governed by this ordinance and includes several prohibited land uses (see previous section). Before development can occur, the APFO and TIA requirements will have to be met. **[A Determination of Adequacy for the project was issued in May 2008 and the TIA has been approved.]***
- 3) Whether the proposed reclassification will adversely affect a known archeological, environmental, historical or cultural resource." *The requested action will not adversely affect known archeological, environmental, historical or cultural resources.*

STAFF RECOMMENDATION

Staff recommends approval of revising the original rezoning of this parcel zoned Town Center-Conditional District (TC-CD) to allow for a portion of the parking deck and drive aisle to be located as shown on Attachment A.

PLANNING BOARD RECOMMENDATION

TBD

ATTACHMENTS

A – Site Plan

STATEMENT OF CONSISTENCY

Per the North Carolina General Statutes § 160A-383 and Article 11.4.7 b-d of the Town of Huntersville Zoning Ordinance, rezoning actions must be accompanied by a *Statement of Consistency*. Two statements are provided below that need to be incorporated into the motion either to approve or deny the petitioner's request.

[Approve]

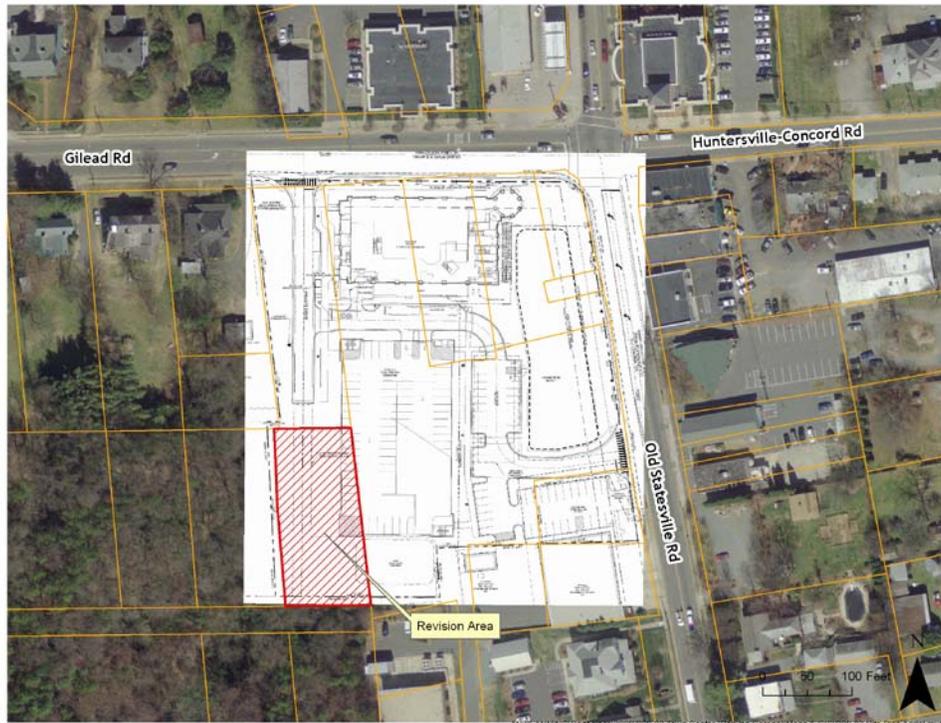
In considering the proposed amendment to the official zoning map to revise the rezoning for one (1) parcel (totaling 0.4-acres), currently zoned Conditional District (TC-CD), the Town Board of Commissioners finds that the rezoning revision is consistent with the Town of Huntersville Community Plan and the Downtown Master Plan. We recommend amending Rezoning Petition R-09-02, as presented. It is reasonable and in the public interest to amend the rezoning plan because..... *(Explain)*

OR

[Deny]

In considering the proposed amendment to the official map to revise the rezoning for one (1) parcel (totaling 0.4-acres) currently zoned Town Center-Conditional District (TC-CD), the Town Board finds that amending the rezoning plan is not consistent with the Town of Huntersville Community Plan and the Downtown Master Plan. We recommend denial of Rezoning Petition R09-02. It is not reasonable and not in the public interest to rezone this property because..... *(Explain)*

Attachment A



David Peete, Principal Planner, said the site plan has been provided. It's a revision to the old rezoning.

There being no comments, Mayor Swain closed the public hearing.

State Statute Amendment for Tree Preservation. Mayor Swain called to order public hearing on State Statute Amendment for Tree Preservation.

Staff Analysis attached hereto as Attachment No. 5.

Jack Simoneau, Planning Director, said in your agenda packets is the proposed language that would change the State Statute authority for tree preservation. Just to sum up the staff analysis, I believe Cornelius approached Thom Tillis and asked for the State Statutes to be amended to allow the preservation of trees for single-family and duplex development. The towns of Huntersville and Davidson were asked do you want to join since the original bill was drafted for all three towns and all three towns decided yes, we'll proceed and have the same statute amendment. That is the proposal. Attachment 1 is the current house bill. Attachment 2 shows the proposed language. Attachment 3 shows what the City of Charlotte has and so our communities are looking similar to what the City of Charlotte has in terms of authorization. I would just mention that Thom Tillis, our representative, specifically said if you are going to ask for this amendment, to hold this public hearing. So that's the nature of the public hearing. It's not a part of our zoning ordinance.

Greg Ferguson, Town Manager, said I would note that I mentioned it earlier today to Commissioner Jeter that an enactment of the bill does not institute the regulation. There has to be an ordinance adopted by this board or a future board in order to actually turn on the regulatory power.

Commissioner Sisson said I'm baffled. I'm glad you told us this came out of Cornelius because I would be very upset if I heard this came out of Huntersville. My only comment to it is you've got to be kidding. I can't make any other comment.

Commissioner McAulay said this means that somebody in Huntersville is going to write an ordinance when I'm no longer on this board that says that they have control over my trees in my yard.

Mr. Simoneau said that's not the intent. The intent is not to regulate individual property owners. We don't have enough staff, there's not enough time or money. It's residential developments, subdivisions and developments of that nature, not the individual single-family homes.

Bob Blythe, Town Attorney, said I would have to agree that it does give the authority. The question that was really raised, if you will notice that little underlined portion and what the authority is right now, any ordinance adopted pursuant to this section shall exclude property to be developed for single-family or duplex homes. Actually, there was a disagreement among the other two towns as to what that means.

Commissioner Lucas said the way this is stated is to be developed, that's future development. That does not deal with current, existing, single-family or duplex residential.

Mr. Blythe said that's the existing legislation. You already have that authority, with this exclusion.

Commissioner Lucas said by changing it, you are changing it to everything.

Mr. Blythe said it changes the authority.

There being no further comments, Mayor Swain closed the public hearing.

OTHER BUSINESS

State Statute Amendment for Tree Preservation. Commissioner Sisson made a motion to deny. Commissioner Jeter seconded motion.

Motion carried unanimously.

Petition R08-01. Petition #R08-01 is a request by Harris Development Group to rezone 53.29 acres located along NC Highway 115 (across from Caldwell Station) from Transitional Residential, Corporate Business and Corporate Business – Conditional District to Transit Oriented Development – Residential Conditional District.

Mayor Swain said there was a request to defer. *Refer to letter attached hereto as Attachment No. 6.*

Tracy Finch, Petitioner, said we are asking to defer until July primarily because we have asked for extensions on the two remaining parcels. We have gotten those and we don't feel like it's fair until we know for sure that we are going to close on the property and we are going to be able to secure financing

to go ahead and go through with the rezoning. We want to get a little bit closer to the closing date and make sure that we have secured financing. We are willing to go back through the public hearing and Planning Board if we need to. If we do that, we would propose to come back for a public hearing July 6, Planning Board July 28 and a decision August 17.

Commissioner Jeter said Mr. Blythe, it seems like to me that at the last deferral, which I stated I would never give you another deferral, the question of intensification was brought up and whether or not the removal of certain sections intensify the project and therefore would require a new public hearing and another round of planning. It appears in their letter that they are suggesting that they accept that fact and move forward. Is that acceptable in your legal opinion? They are saying we would ask to reappear before the Board in July or August and then they would need to hold another public hearing potentially and another Planning Board review process. They are offering that we decide whether or not this is a true intensification with the removal of the blue area.

Mr. Blythe said I don't think it was decided if it was an intensification. My recollection is that we said that was a decision the Board was going to have to look at. You're always safe with another public hearing.

Commissioner Jeter said it sounds like to me that prior to us voting on this deferral that we need to come to some resolution of what the process is going to be, because it doesn't make sense for us to defer it to July only to figure out then if we need a new public hearing or not. If we are going to need a new public hearing, if that's the thought process of the Board, I would just assume we would go ahead and schedule that and put it in the queue as opposed to waiting until July and then try to add it then.

Commissioner Sisson said I think I was one of the ones who mentioned it, but I think by removing that parcel it's a definite intensification of the entire project and I think it should go through another public hearing.

Ms. Finch said that was exactly why we went ahead and said we would go back through the public hearing and the Planning Board, because we didn't want to get to July and then have the debate and then determine that we needed to come back in August. I just feel like since there was some question about whether or not it would be an intensification, and I can see both sides of it to where it would be or where it wouldn't be, it's just easier to cover our bases and go back through the process.

Commissioner Lucas said to clarify Commissioner Jeter's point, though, in your letter you are asking to reappear before the Board in July or August to determine if our plan is viewed as an intensification. I think we are trying to determine that now.

Commissioner Jeter said I think Ms. Finch would be satisfied with us determining that now. Mr. Blythe has stated that we need to call for another public hearing.

Commissioner Julian said I don't think we have determined that. The way I was reading, the TOD development allows for so many units per acre. I have not heard that with dropping out the land they have that what's left is going over that number of units per acre in the TOD development. I'm not sure it is an intensification, but I am willing to grant the deferral because I want to see the Harris project come back with a good project.

Commissioner Jeter said I don't think it's an intensification in principle, although I understand Commissioner Sisson's point which is if you remove the land and not units, obviously the number of units per acre intensifies. There's no question of that.

Commissioner McAulay made a motion to defer until August and to call for a public hearing on July 6.

Commissioner Julian seconded motion.

Commissioner Sisson asked what are we deferring until August?

Commissioner McAulay said the decision.

Commissioner Sisson said I hesitate to agree to a call for a decision in August. If we get to the public hearing in July and for whatever reason it has to be deferred, extended, kept open, whatever.

Mr. Blythe said I think it would be safe enough to defer it to July and call for a public hearing at that time.

Commissioner McAulay amended her motion to defer to July 6 and call for a public hearing.

Commissioner Lucas seconded amended motion.

Commissioner Jeter said if I'm correct the motion therefore before us now is to defer until July and then call a public hearing.

Mr. Blythe said and call a public hearing for the same night.

Mayor Swain called for the vote.

Motion carried unanimously.

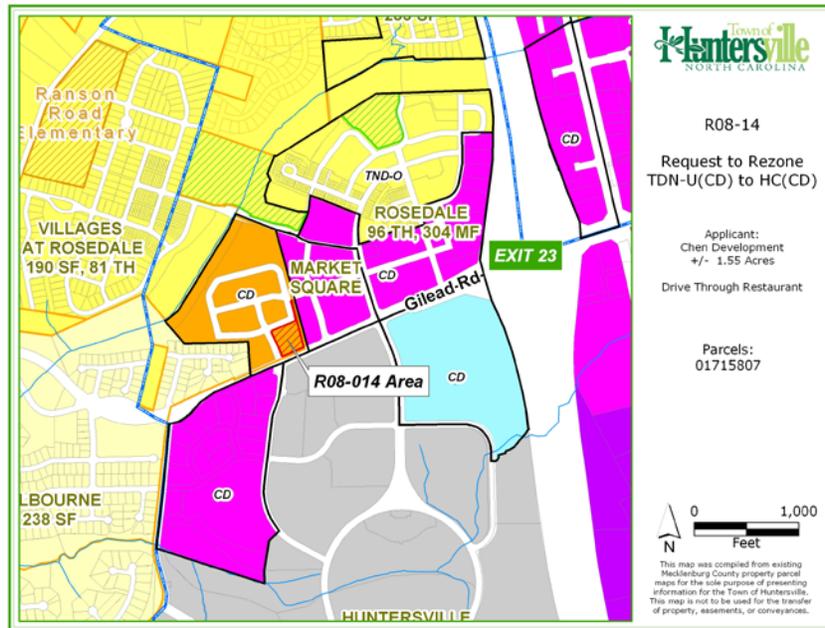
Petition #R08-14. Petition #R08-14 is a request by Chen Development LLC to rezone the northeast corner of the intersection of Gilead Road and Boren Street from Traditional Neighborhood Development – Urban Conditional District to Highway Commercial Conditional District. *Staff Analysis is below. Other documents related to this public hearing are attached hereto as Attachment No. 7.*

**Rezoning Petition #R08-14
Chen Development Conditional District Rezoning Application
(Laurel Restaurant)**

EXPLANATION OF THE REQUEST

R08-14 is a request by Chen Development LLC to rezone the north east corner of the intersection of Gilead Road and Boren Street from Traditional Neighborhood Development-Urban Conditional District (TND-U CD) to Highway Commercial Conditional District (HC-CD). The proposed use would be a drive through restaurant.

LOCATION



SITE PLAN DESCRIPTION

1. Parcel ID Numbers: 01715807
2. Address: 14230 Boren Street
3. Project Size: Approximately 1.55 acres
4. The property is located at the north east corner of the intersection of Gilead Road and Boren Street
5. Current Land Use and Zoning: Zoned Traditional Neighborhood Development-Urban Conditional District (TND-U CD) and is a vacant parcel.
6. Proposed Land Use and Zoning: Highway Commercial Conditional District (HC-CD) for a drive through restaurant use.
7. Adjoining Land Use and Zoning:
 - a. To the north: TND-U CD Zoning; Apartment Complex
 - b. To the south: HC zoning ("Huntersville Business Park West" commercial subdivision) and CB zoning (Torrence Village Retail Center)
 - c. To the west: TND-U CD zoning (First Citizens bank) and GR zoning (Melbourne single family residences).
 - d. To the east: HC-CD zoning (Market Square Retail Center).
8. Under the previous Laurel at Huntersville TND-U CD rezoning (R04-19), the parcel in question was approved specifically for a 14,550 ft² retail use with a drive through accessory use.
9. The Neighborhood Meeting was held on Thursday February 5th, 2009. Please find the invitation list, attendance list, and meeting summary attached.
10. A follow up Neighborhood Meeting was held on Thursday February 12th, 2009 for the Melbourne Homeowner's Association. Please find the attendance list and summary attached.
11. No protest petitions for this rezoning application have been filed.
12. There are no specimen trees currently located on the property and therefore tree save requirements are not applicable for the property in question. However, as part of the Laurel at Huntersville tree save mitigation, larger than normal street trees were to be planted along Gilead Road (5 inch caliper rather than 2 inch caliper). Some of the trees planted by the development are dying and need to be replaced. The applicant has noted that they will replace the trees.
13. Water Quality measures will be provided as required per Article 8.17 of the Town of Huntersville Zoning Ordinance. Mecklenburg County Engineering has disapproved the applicant's proposed concept plan. The plan will have to be resubmitted and reviewed for conformance.
14. Per code, the proposed restaurant's traffic generation would make the proposed use subject to the Traffic Impact Assessment (TIA) ordinance. The results of the TIA have been completed and do indicate that some mitigation of surrounding intersections is required. Please see transportation comments below for details.
15. Elevations for the proposed building have been submitted by the applicant. Therefore, these elevations will serve as an offered condition to the rezoning plan. If the rezoning is approved, any proposed building would be subject to the elevations submitted with the application.
16. There are no SWIM buffers or greenways located on the site.
17. No flood plain is present on the site. The property is however located in a protected watershed district.
18. Public water and sewer will be provided through existing Charlotte-Mecklenburg Utility mains.

SITE PLAN / ARCHITECTURAL ISSUES

- Architecture of Existing Development: Article 3.2.7 D 1 of the ordinance states that new buildings shall respect the general spacing of structures, building mass and scale and street frontage relationships of existing buildings. The two adjacent buildings to the development in question (First Citizen's Bank and Wachovia Bank) both have a pitched roof architectural design. The residential apartments behind the property also have pitched roofs. The proposed building has a flat roof with parapet. Staff would recommend that the proposed building incorporate a more pitched roof design to imitate the buildings that surround it. Staff is not suggesting the corporate franchise roof design of drive through restaurants be used; but a more residential pitched roof design is being encouraged. Please find photos of the adjacent buildings attached for your reference. (Attachment A)
- Screen Wall on Gilead: The proposed development has a screen wall extending along its Gilead Road frontage. Staff supports the screen wall around the loading area near the side of the building where many utilities will likely be, but not in front of the building. It is not clear why a detached screen wall needs to extend in front of the building. If it is needed, staff recommends that the wall be designed with more articulation. Please find a photo of the Birkdale Walgreens screen wall attached for your reference. This screen wall screens the loading area for the drugstore. (Attachment B)
- Façade Articulation: The applicant has done a good job emulating the "pseudo-second story" design with the increased height of the parapets. The Torrence Village development did the same with some of their buildings. However with that taller building design comes more blank wall that needs to be "broken up". Staff recommends either windows or faux windows be established above the ground level to make the full façade more visually appealing. (Note: If the applicants amend their elevation with a pitched roof design as staff recommends above, this comment may not be necessary.)

TRANSPORTATION ISSUES

- A Transportation Impact Analysis (TIA) was conducted for the proposed use per Article 14 of the ordinance. The analysis concluded that mitigation of two intersections is required. They are as follows:
 - 1) Gilead Rd & McCoy Rd: Must mitigate ICU% of 2.2% AM/0.7% PM
Mitigation: Change the lane configuration of the eastbound approach to an exclusive left-turn lane, one exclusive through lane and one through lane shared with a right-turning movement.
 - 2) Gilead Rd & Reese Blvd: Must mitigate ICU% of 1.6% AM/1.3% PM
Mitigation: Restripe the northbound approach to an exclusive left turn lane, one through lane shared with both left and right turning movements and one exclusive right turn lane.
- Both mitigation requirements would only include restriping at the two intersections. The recent road improvements to Gilead Road increased the capacity of Gilead Road in general and therefore major traffic improvements were not required.
- **Note**: The Traffic Impact Analysis was not a study of the proposed drive through restaurant traffic generation versus the previously approved retail building traffic generation. It was simply a study of the proposed use's traffic generation and its effect on current traffic counts and surrounding intersections.

2002 REZONING APPLICATION

- A similar rezoning for a drive through restaurant was applied for back in 2002 (R01-02). At that time, the Huntersville United Methodist Church owned the property and applied for a rezoning to HC-CD. However, after the public hearing the applicant requested that the item be withdrawn from consideration. Please find the minutes of that public hearing and the withdraw request attached (ATTACHMENT C).

PUBLIC HEARING – 3/16/09

- The public hearing for the application was opened and closed on March 16th, 2009. One Melbourne resident spoke in favor of the development stating that as a senior, he looked forward to being able to walk to the restaurant. One other Melbourne resident spoke against the project citing an increase in traffic, trash and the possibility of the facility becoming a hangout for teenagers. No one else spoke on the application from the public. The Town Board raised a concern over whether or not the traffic information produced by staff showed the true traffic effect on the area (in regard to "new trips" versus "pass by trips"). Staff maintained that the purpose of the information was to show how very different and auto-dependent a drive through restaurant was; not to comment on specific transportation concerns. Discussion ensued with the Board and staff on whether or not the Gilead Road corridor west of I-77 was truly "walkable" and "pedestrian oriented". A concern about the amount of parking was raised by the Board and whether or not additional screening was needed toward the rear of the property.

PLANNING BOARD MEETING – 3/24/09

- The Planning Board reviewed the proposed rezoning application at their March 24th, 2009 regular meeting. The Board discussed the staff analysis and questioned the traffic pattern of the development. The thought was conveyed that the circulation of cars through the parcel created an unsafe situation for motorists and pedestrians. The specifics about where McDonald's customers come from (how close by) was also questioned and discussed. The representative of the Melbourne Homeowner's Association (HOA) was there to address the Board and give the HOA Board's support to the applicant with an agreement that if approved by the Town Board, McDonald's would pay for speed humps through the neighborhood. One homeowner from the Melbourne subdivision spoke against the rezoning.

Jonathan Guy from Kimley Horne and Associates, upon the applicant's request, went over several traffic generation statistics in regard to ADT, pass by trips, peak trips, internal capture etc. The Board and the applicant discussed how the proposed McDonald's fit in to each of those categories.

After further discussion, the Planning Board by a 4-3 vote recommended that the Town Board deny the proposed application due to: not being consistent with surrounding development, for potential safety issues, and other architectural issues as outlined by staff. Please see the proposed drafted minutes attached for further reference (ATTACHMENT D)

PLANNING STAFF ANALYSIS

Article 11 Section 11.4.7(d) of the Zoning Ordinance states that “in considering any petition to reclassify property, the Planning Board in its recommendation and the Town Board in its decision shall take into consideration any identified relevant adopted land-use plans for the area including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents”.

Staff Comment

The proposed development location is not located in any immediate small area plan study area. The proposed development however is consistent with the Commercial Corridor Recommendations of the Huntersville Community Plan.

Article 11 Section 11.4.7(e) of the Zoning Ordinance states that: “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.**

Staff Comment

It is staff’s opinion that a drive through restaurant would not be consistent with the character of development on Gilead Road. In the recent development history of Gilead Road to the west of Interstate 77, no drive through restaurants have been permitted or developed. Back in 1998 the Market Square commercial development (Phase I and II) began the trend of eliminating that use in the area by prohibiting it as a part of its conditional rezoning plan. Rosedale, the Laurel at Huntersville, and Huntersville Business Park West later followed suit. Torrence Village (vested Huntersville Business Park) had the opportunity to develop drive through restaurants if they so desired but they choose not to; continuing the “no drive through” theme we see today. Approving a drive through would break the pattern of development that was established over 10 years ago.

Also, drive through restaurants are very automotive dependent; even more so than banks and drugstores with drive through windows (please see the ADT traffic statistics outlined in the staff comment below). A bank or drugstore drive through is more of an accessory use than a drive through is for a restaurant. A drive through restaurant depends much more on the drive through traffic for its business. Establishing such an automotive dependent use on an otherwise more pedestrian friendly Gilead Road would not be in keeping with the existing development pattern for the area. A pedestrian oriented commercial corridor (without drive through restaurants, car washes, etc) at an interstate interchange is a rare phenomenon in today’s market. Staff recommends keeping this unique character of Gilead Road as it currently exists.

In addition, approving a drive through restaurant could set a precedent that leads to a new development pattern on Gilead Road. After one drive through restaurant is established, it should not be long before another drive through restaurant chain applies to locate in the area to compete with the existing one. Such a development precedent could lead to even further degradation of the corridor.

The subject parcel on Gilead Road is very close to residential development; both multi-family and single family homes. If an automotive dependent use such as a drive through restaurant belonged anywhere on Gilead Road, it would be closer to the interstate and away from residential development. Being in close proximity to residential uses could potentially create increased traffic, nuisance smells, and litter problems (everything served at fast food restaurants comes with a disposable container) for nearby residences.

The following traffic trip generation information is intended to compare/contrast the automotive orientation of various outparcel uses. The information is not intended to examine any uses’ specific impact on the existing roadway system nor is it a transportation comment or concern. The statistics below comes from the Institute of Transportation Engineers (ITE) Trip Generation Manual 8th Edition (sit down restaurant comes from the 6th edition):

14,000 ft² Drugstore (w/drive through)

Average Daily Trips (ADT) = 1,234**
AM Peak Trips = 38
PM Peak Trips = 121

4,000 ft² Bank (w/drive through)

Average Daily Trips (ADT) = 593**
AM Peak Trips = 64
PM Peak Trips = 134

5,200 ft² Sit Down Restaurant (no drive through)

5,200 ft² Drive Through Restaurant

ADT = 2,580
AM Peak Trips = 277
PM Peak Trips = 181**

(From ITE Manual 6th Edition)

Average Daily Trips (ADT) = 677**

AM Peak Trips = 48

PM Peak Trips = 56

****NOTE:** Some traffic included in the ADT numbers above is “pass by traffic”. Such traffic would normally pass by a facility anyway before it was built (on their way to work perhaps) and then stop at the development once it is built. A development’s “pass by traffic” would thus not increase the negative effect on nearby intersections due to not adding “new trips” or new visitors to the traffic network (they were already going through the intersection before the development was built).

ADT however accurately reflects actual car trips at the facility and thus the restaurant. Whether they’re new trips, peak trips, or pass by trips, etc they all end up at the facility. The significantly higher ADT numbers of a drive through restaurant speaks to how much more “automobile-oriented” a drive through restaurant is. Thus, approving such a use would change the development pattern away from the more pedestrian oriented uses on Gilead Road.

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.**

Staff Comment:

Staff feels that the transportation improvements listed above will be sufficient to service the subject property and those surrounding it at this time.

3. **Whether the proposed reclassification will adversely affect a known archeological, environmental, historical or cultural resource.”**

Staff Comment:

Planning staff has no indication that the request will adversely affect known archeological, environmental, historical or cultural resources.

STAFF RECOMMENDATION

Because the proposed use is not “consistent with the overall character of existing development in the immediate vicinity of the subject property” per Article 11 Section 11.4.7(e), staff recommends denial of the rezoning for the drive through restaurant. If the Town Board deems that such a use is appropriate however, staff would recommend that the architecture of the building be altered to fit in more with the architecture of the surrounding development and that all the applicable site plan and architectural issues be addressed.

STATEMENT OF CONSISTENCY

Per the North Carolina General Statutes § 160A-383 and Article 11.4.7 b-d of the Town of Huntersville Zoning Ordinance, rezoning actions must be accompanied by a *Statement of Consistency*. Two statements are provided below that need to be incorporated into the motion either to approve or deny the petitioner’s request.

[Approve]

In considering the proposed Laurel Restaurant (R08-14) conditional district rezoning application, the Planning Board/Town Board finds that the rezoning plan is consistent with the Town of Huntersville Community Plan and other applicable long range plans. We recommend amending the Town of Huntersville zoning map as shown in the R08-14 application. It is reasonable and in the public interest to amend the zoning map because..... (*Explain*)

OR

[Deny]

In considering the proposed Laurel Restaurant (R08-14) conditional district rezoning application, the Planning Board/Town Board finds that the rezoning plan is not consistent with the Town of Huntersville Community Plan and other applicable long range plans. We recommend that the R08-14 application be denied. It is not reasonable and not in the public interest to amend the zoning map because (*Explain*)

Brad Priest, Senior Planner, said we are here for consideration of final action of the rezoning of potentially a fast-food restaurant at the northeastern corner of Boren and Gilead. It’s a McDonald’s. I just want to point out the updates that have taken place since the public hearing. One of the things that has changed on the site plan, staff had a comment about wanting to make a better build-to line closer to Boren Street. We asked the applicant to make a decorative fence that extended out to incorporate a

pseudo build-to line that would enclose that corner. They have done that. Sidewalk completion – for some reason the street in the back did not finish and connect the sidewalk and they agreed to do that. The elevation – since the public hearing staff recommended that since they were going for a higher pseudo second story wall that they add some kind of architectural articulation on the top to make it more visually interesting to break that up a little bit. What they have proposed is kind of a brick herringbone pattern that blends in. I did want to point out a couple of changes to the conditions that were put forth on the plan. The Melbourne Homeowners Association got together with the applicant and came up with an agreement. It's a private agreement between them and the homeowners association, but some of those items that were in the agreement are being forwarded as conditions to the plan. Some of them are requirements that the neighborhood be notified of any major changes, brick pavers would be used in the crosswalk area, those types of design elements are incorporated in that plan. There has also been discussion about speed humps as a condition to that agreement. There's a lot of contingencies and conditions to that agreement, but I just want to point out that is not being added as a condition in this rezoning, therefore the town won't have any kind of enforcement responsibility for that agreement. There was a lot of discussion about the interior of the McDonald's. There is no proposed condition on the interior in the plan, so the applicant is not held to anything. I just want to make a point of clarification on that. The Planning Board met on March 24 to discuss the item at their regular meeting. At that time they recommended by a 4 to 3 vote the application be denied due to not being consistent with adjacent development, due to architectural issues and safety concerns with the proposed design. Planning staff's recommendation is also still to deny as brought out in the staff analysis. Transportation Staff has no problem with the application as long as the mitigation as shown in the TIA and the staff analysis is implemented.

Commissioner Jeter said I would like to acknowledge that the brother of Mr. Watson who is a partner of Chen Development is my business partner in my company. I have no financial ties to this project or to Mr. Watson other than his sibling relationship with my business partner in my trucking company.

Commissioner Sisson asked the changes that are on here that you just presented, the petitioner is in agreement with all of them?

Mr. Priest said yes. We got some more potential changes this morning. I guess it was a result of discussions with staff and the Town Board.

Susan Irvin said I'm representing the applicant. I just wanted to point out we added some additional landscaped islands to the rear northern boundary of the site, reducing some parking back there and also added a thicker hedge between the apartments and the site and also minor reorientation of the dumpster location. The petitioner will agree to initially construct the interior of the store in a style that is similar to the photographs of the interiors that were shown at the public hearing. The specific fabrics and materials are chosen by the local franchisee. Those are really determined during the permitting process. Finally, another point that I wanted to make was that we had stated the operating hours would be 6 a.m./7 a.m. in the morning until 10 p.m./11 p.m. at night. In consultation with McDonald's Corporate, they agreed to the parameters of the operating hours being one hour before that, 5 a.m., and one hour after, midnight. I did advise them that they usually leave that determination up to the local franchisee. If the local franchisee at some point in the future wanted to come back and ask for an amendment to the zoning plan, they could go through this process and I have advised them of that. But, that is the agreement. McDonald's does refurbish all their stores every 7 years, so that's why I said initially.

Bill Baker, Melbourne Resident, said we are seniors, retired people in the community and we want to make sure that it is understood that we are in favor of this McDonald's development. The local paper when I appeared on March 26 came out with a quotation from me that was totally wrong, attributed to me, Bill Baker, and I wanted to appear here tonight to make sure everybody understands that Bill Baker is in favor of this McDonald's development. It's 1-1/2 or 2 blocks from my home and we'll be able to walk to there and be with our friends and retired members of the community and we are looking forward to visiting and having it in our community.

Commissioner Jeter made a motion that in considering the proposed Laurel Restaurant (R08-14) conditional district rezoning application, the Town Board finds that the rezoning is consistent with the Town of Huntersville Community Plan and other applicable long-range plans. We recommend amending the Town of Huntersville zoning map as shown in the R08-14 application, with the conditions as stated here by Ms. Irvin – the hours of operation are from 5 a.m. to midnight, the hedgerow, the pretty fence, parking modification, dumpster reorientation, and the initial construction of the interior of the store. It is reasonable and in the public interest to amend the zoning map because I believe it is consistent with the overall plan of Huntersville and fits in well with the surrounding community.

Commissioner Lucas seconded motion.

Commissioner McAulay said I will be voting against it because there was already a conditional plan there that built everything that was on the plan except this one piece of property that was supposed to be commercial with no drive-throughs. There's an agreement written by the Melbourne Homeowners Association that I think implies a contract with the developer and I think that passing it that Huntersville then becomes a part of that contract. The four points in the e-mail today include that the petitioner has supposedly assured the Melbourne Homeowners Association that this is the only drive-through restaurant that will be built on Gilead west of I-77. I really don't think that they are in a position to say that, because Gilead Road goes all the way out to Beatties Ford and in addition to that, if this is approved it opens it up for Rosedale, Market Square, Torrence Village, The Park and Gilead Village to all come in and make adjustments to their development plans and there would be no justification for a board not to approve it. The second thing is something about they wouldn't switch out this plan that has been presented with a scaled down building or plan with lesser landscape. That might have been added to the site plan notes, I don't know. The additional one is they are talking about the petitioner agreed to provide funding to help offset costs for community landscape improvements to the Melbourne common area, this is by the developer. It doesn't say how much it is. It doesn't say who is going to determine what the offset cost is. Another thing, if the Melbourne residents say that this rezoning increases cut-through traffic from Gilead Road to McCoy Road due to this drive-through restaurant, the petitioner would pay for speed humps. Are they going to fund a traffic analysis or are they just going to take the Melbourne people's words for it? I think that the petitioner in trying to gain this has tried to satisfy Melbourne by making promises that they cannot fill. I do not think that a fast food on that section of Gilead Road in this area of Huntersville improves the area. The only drive-through restaurants we have are on Highway 21. I am against this development plan.

Commissioner Jeter said in response to Commissioner McAulay, I would like to echo some of your statements. While I disagree with you and my vote will go different than yours, I do agree 100 percent and I hope the residents of Melbourne clearly understand that no one other than the Town of Huntersville Board by a formal vote has the ability to make such concessions and none are in my motion. The argument that there will be no drive-through restaurants west of I-77 on Gilead Road, I think Commissioner McAulay probably may be correct that this could open up pandoras box. I know if you

want speed bumps, that's a two to three year process of nightmares, historically speaking. I would not bank on any promises that may or may not have been made. I do not have a copy of that letter, for some reason I did not receive it. I can assure you the only things that are promised are the things that are promised in my motion.

Commissioner McAulay said those are from supposedly the president of the Melbourne HOA and he sent it to us twice. He attached it in today's e-mail.

Ms. Irvin said what we did agree to was the provisions in the letter agreement. We did agree to provide 100 percent funding for the installation of up to two, but that was with HOA approval and if permitted by the Town of Huntersville. That is not a note on the plan. That is a private agreement between the developer and the neighborhood association. We did confirm that the rezoning request was only for the 1.55-acre site. We agreed that the Melbourne Board would be notified of any changes to the site plan in the future that were not minor. There is an agreement to provide funding to offset costs for the landscaping.

Commissioner Jeter said if they made private assurances to each other, Bob, correct me if I'm wrong, but it's not bound by the zoning.

Mr. Blythe said if it is not part of the plan, it does not bind us.

Commissioner Jeter said as long as Melbourne understands and the Homeowners Association understands that the plan is not contingent on those things and they have a private arrangement like any other two private organizations. That's between them.

Mayor Swain called for the vote to approve Petition #R08-14.

Motion carried 4 to 1, with Commissioner McAulay opposed.

Revised Capital Project Ordinance – Town Center. Greg Ferguson, Town Manager, said this is a revised Capital Project Ordinance that shows construction costs as we know that, improvements to NC 115 and Gilead Road and the streetscape.

Commissioner McAulay made a motion to adopt revised Capital Project Ordinance for the Town Center project. Commissioner Julian seconded motion.

Motion carried 3 to 2, with Commissioners Sisson and Lucas opposed.

**TOWN OF HUNTERSVILLE
TOWN CENTER PROJECT
REVISED CAPITAL PROJECT ORDINANCE**

BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

SECTION 1. The project consists of the construction of a mixed use project in the southwest quadrant of Gilead Road and Highway 115 to include a Discovery Place Kids! Museum, town office space, a parking deck, streetscape and road improvements.

SECTION 2. The officers of the unit are hereby directed to proceed with the capital project within the terms of the budget contained herein.

SECTION 3. The following amounts are appropriated for this project:

Land, Construction, Design, Testing, etc.	\$18,546,205
Gilead/115 Intersection Improvements	250,000
Streetscape	<u>642,500</u>
TOTAL PROJECT COSTS	<u>19,438,705</u>

SECTION 4. The following revenues are anticipated to be available to complete this project:

Bank Loan	17,046,205
Fund Balance-designated for debt service	800,000
Fund Balance-Storm Water Reserve	700,000
Fund Balance-Transportation Reserve Fund	250,000
Bond Proceeds 2004 (streetscape)	500,000
Federal Funds	<u>142,500</u>
TOTAL PROJECT REVENUE	<u>19,438,705</u>

SECTION 5. The Finance Director is authorized from time to time to transfer as a loan from the General Fund or unspent bond proceeds in the Capital Projects Funds, cash in an amount necessary to meet obligations until such time as financing is arranged, at which time repayment will be made and the Finance Director is authorized to sign the Declaration of Official Intent to Reimburse Expenditures as required by Internal Revenue Service regulations.

Budget Amendment – Lake Norman Transportation Commission. Greg Ferguson, Town Manager, said this relates to the Interlocal Agreement that the Board adopted earlier this year. This is for costs up through June 30.

Commissioner Lucas made a motion to approve budget amendment. Commissioner Jeter seconded motion.

Motion carried unanimously.

Reengaging Bradley Arant. Greg Ferguson, Town Manager, said the existing agreement ran through March 30. This is to consider reengaging for the coming 12 months – the period April 1 through March 30, 2010.

Commissioner Lucas said first and foremost when we started down this path I clearly identified that when you go out and seek government lobbyist, it is not a one year shot. Mr. Harris was clear with us that his success rate could not be dependent upon being the one year wonder, that this was going to be a long or at least a multi-year commitment on behalf of this Board. With that, and seeing that we have now gone just over a year now of the benefits of contracting with Bradley Arant as our government affairs representation, I *make a motion to approve reengaging Bradley Arant for governmental affairs representation, based on the success that we are going to hopefully see in the future with other potential funding measures for our transportation needs.*

Commissioner Jeter seconded motion.

Commissioner Jeter said if there's a way to do this, I would like for this contract to be amended or altered so that it ends June 30 to coincide with our fiscal year, so therefore it can be a part of the budget

conversations moving forward. We may not be able to do it on this 12 month one, but as it comes around next time, maybe make it a 15-month, so it can be an annual budget discussion as opposed to a separate item.

Mr. Ferguson said we actually had that discussion with him when he was here last time, so we will follow-up on that.

Commissioner Sisson said you mentioned something in your motion or prior to your motion about the success to date. Can you share what the success to date is?

Commissioner Lucas said I would clearly say that our success is being able to get in with not only Representative Myrick but the entire North Carolina delegation and his ability to interface with key staff members that belong to those members up there I think has put us in far better than we could have possibly done on our own. When I say success, it's again that first year success of getting your contacts established, getting your foot in the door and then hopefully as we move down this process, I'm hoping that we will see the fruits of that through some sort of legislation and/or appropriation.

Commissioner Sisson said I was opposed to it the first time and will oppose it again.

Mayor Swain called for the vote.

Motion carried 4 to 1, with Commissioner Sisson opposed.

Reengagement Letter attached hereto as Attachment No. 8.

Municipal Speed Limit Ordinances. Commissioner Jeter made a motion to adopt municipal ordinances. Commissioner Sisson seconded motion. Motion carried unanimously.

<u>Declare the Following Speed Limit</u>		
<u>Speed Limit</u>	<u>Route</u>	<u>Description</u>
45	US 21	US 21 from a point 0.25 mile north of SR 2004 (Mount Holly Huntersville Road) Northward to a point 0.35 mile north of NC 73.

<u>Rescind the Following Speed Limit</u>		
<u>Speed Limit</u>	<u>Route</u>	<u>Description</u>
45	US 21	US 21 from a point 0.25 mile north of SR 2004 (Mt. Holly Huntersville Road) Northward to SR 2136 (Gilead Road).
45	US 21	US 21, from SR 2140 (Stumptown Road), northward to the northern corporate Limit of Huntersville, a point 0.35 mile north of NC 73.

<u>Declare the Following Speed Limit</u>		
<u>Speed Limit</u>	<u>Route</u>	<u>Description</u>
45	NC 73	NC 73 from SR 2143 (Babe Stillwell Farm Rd) to I-77.
45	NC 73	NC 73 from a point 0.19 mile east of SR 2434 (Rich Hatchet Rd) to NC 115.

<u>Rescind the Following Speed Limit</u>		
<u>Speed Limit</u>	<u>Route</u>	<u>Description</u>
45	NC 73	NC 73, from SR 2143 (Babe Stillwell Farm Road), eastward to SR 5544 (Old NC 73).

45 NC 73 NC 73 (Sam Furr Road) from US 21 eastward to NC 115.

Declare the Following Speed Limit

<u>Speed Limit</u>	<u>Route</u>	<u>Description</u>
45	SR 2136	(Gilead Rd) from SR 2128 (Beatties Ford Rd) to a point 0.32 mile north of SR 2131 (Bud Henderson Rd).
40	SR 2136	(Gilead Rd) from a point 0.1 mile east of SR 2131 (Bud Henderson Rd) to a point 0.1 mile west of SR 2138 (McCoy Rd).

Rescind the Following Speed Limit

<u>Speed Limit</u>	<u>Route</u>	<u>Description</u>
45	SR 2136	SR 2136 (Gilead Road), from SR 2128 (Beatties Ford Road), eastward to a point 0.40 mile east of SR 2137 (Ervin Cook Road).

Copy of full ordinances attached hereto as Attachment No. 9.

Accept Road for Town Maintenance. *Commissioner Lucas made a motion to accept road for Town maintenance. Commissioner Jeter seconded motion.*

Motion carried unanimously.

Street Name	From	To	Approx. Length
Huntingtown Village Road	Hiwassee Road	Dead End	2200 Ft

Filing Fees for 2009 Election. *Commissioner Lucas made a motion to approve filing fee of \$10 for Mayor and \$5 for Commissioner for the 2009 election. Commissioner Jeter seconded motion. Motion carried unanimously.*

Budget Amendment – NW Huntersville Transportation Study. Commissioner Lucas said it is my understanding that we are on the cusp here of spending \$37,000 for our consultant to develop, analyze and conduct public involvement on Option 4 when I would clearly classify this as not a pressing need at this point or this juncture, being that we currently have what I would consider two viable options and Option 4 does not mitigate any of those concerns from Option 1 or 3 at this point and I would view that this \$37,000 is premature at this point, an unnecessary expenditure and *I'll be moving to deny.*

Commissioner Jeter seconded motion.

Bill Coxe, Transportation Director, said the contract not only examines Option 4 to the same level of detail as Options 1 through 3, but it further examines Options 1 and 3's specific alignments as well as the intersection of Vance Road Extension, alias Gilead Road Extension, and the realigned Highway 73 which is Option 3. As you may remember, there were three left turn lanes that were called for in that particular option and I personally recommended against any intersection that involved triple left turn lanes and so I asked that there be an examination of some interchange or ramp configuration or something that eliminated that three left-turn lane option. The contract with the \$37,000 is an examination not only of Option 4, but is an examination of Options 1 and 3 in light of the utility lines which have been discovered, which will require moving both of those options, as well as some opportunity to not have three left turn lanes, whatever that opportunity might be.

Commissioner Sisson asked does the study take into account the recently approved rezoning out there, or is it not considering that in the study?

Mr. Coxe said it is to the extent possible taking into consideration the conventional subdivision plan that has been filed under the overall HC zoning that was granted on the property. There was a general rezoning of the property to Highway Commercial, which associates no rights with the development. Then they have filed a subdivision plan and to the extent it can, will take that into consideration. My personal recollection is that Options 1 and 3 will infringe on the bottom southeastern corner of that property, if it's submitted. I think the new submittal is pretty close to what was submitted as a conditional zoning plan. If it is and if the boundary is still the same, then it's probably going to hit that southeast corner.

Commissioner Jeter said it was my understanding that the money we are paying is to move the process up in the queue, that if we wanted the study done through the typical MUMPO process, we wouldn't have to pay any fees, but they would get to it when they get to it. Is that not correct?

Mr. Coxe said what we have essentially done is run out of money in the current contract. MUMPO is out of money and time to manage anything else for the time being. If there are additional alignments developed, which Option 4 has been an additional concept developed, that would have to be studied. It's been a valid request and so before we could conclude at least this Board certainly indicated before they would make a recommendation on one option that they wanted to see Option 4 explored. If the Board wants to take that off the table and we go back to examining 1 through 3, we could probably shorten the process and diminish the dollar amount.

Commissioner Jeter said I guess my question is traditionally the Town hasn't paid for these studies, they have been paid for by MUMPO.

Mr. Coxe said traditionally the Town has paid substantial amounts for the studies. Between the original Vance Road study that got us to a defined alignment that took three years, we had I think over \$100,000 on the table on that one.

Commissioner Sisson said is your question can we just put a halt on this thing, let it go through MUMPO when they have time and money to do it, let them do the study.

Commissioner Jeter said if I remember the retreat discussion correctly, I made the comment to which Janet Stoner almost threw something at me that let's get it expedited and throw money at the problem for the purpose of getting this done quicker. My point is with the actions of the Board as a whole, the need for this to be done quicker is not the same as it was then, so why not wait until MUMPO.....we are always going to have to pay the money, it's a separate issue.

Mayor Swain said if you will remember what our actions have been on this project that MUMPO has given us the options that we requested. After we had those options, we put a stop to the process. At this point I don't think MUMPO will say we'll do more work for free. I know for a fact that they will not do that because they have already done what we had originally asked them to and then we put a stop to it.

Commissioner Jeter said that was not the indication at the retreat.

Mayor Swain said but a lot happened after the retreat. We have had a lot of discussion after that. At the last point we said after all their work this is now not a priority of ours. They're sure not going to make it a priority of theirs and they are not going to pay for anymore when they've already paid for a lot.

Commissioner Jeter said I'm not sure we've ever voted to make it a non-priority for us. All we have done is try to expedite the process.

Commissioner Julian said before we vote on this, I was under the impression that the JDH project had been pulled. I had heard that there was some right-of-way issues of widening 73 and landowners and that project had been pulled. I don't know what the status of it is. If the project has been pulled, we don't even really need to be talking about this at this point.

Commissioner Lucas said it's my understanding that there is a sketch plan that's been applied to the general rezoning.

Jack Simoneau, Planning Director, said that's correct. There's a sketch plan that's going to the Planning Board next week and then it will come to the Town Board next month.

Commissioner Julian said that was misinformation. I thought it had been pulled.

Mr. Coxe said to properly evaluate the impacts of either 1 or 3 on the JDH sketch plan that's going to the Planning Board next week you need to refine that alignment. Right now we are not set up to refine that alignment.

Commissioner Sisson asked if we approve moving forward with this study right now, is it going to slow down the JDH project and cause it to go into another tailspin like it has for the last three years?

Mr. Coxe said my recommendation to this Town Board has always been and will always be to figure out where the road needs to go before you approve something and we haven't figured out where the road needs to go yet.

Commissioner McAulay said we asked Bill to find out how much this would cost.

Commissioner Sisson said that was several months ago.

Commissioner Jeter said it was actually a 3 to 2 vote as well.

Commissioner Julian said I think we owe it to the constituents both the 73 constituents and Hubbard Road to allow the study to go forward. Again, sorry about the misinformation, but I had heard that the project was not getting the DOT permits and so forth they needed and the project was dead. Jack just said something different, but I think we should let the study go forward.

Greg Ferguson, Town Manager, said there might be some wisdom in trying to find out if the project is still alive because the developer is having issues other places is my understanding. I don't know that you really need to make a decision tonight. It might do to wait a week or two weeks to find out the exact status.

Commissioner Lucas said can I modify this then, because again I'm going off the wording that's on the agenda and the wording on the agenda was provide for the consultant to develop, analyze and conduct public involvement on Option 4. There's no discussion at all about refining Options 1 and 3, so what I would recommend at this point based on what the Town Manager just said and the clarification from Commissioner Julian as well, is that I do think there's merit for Bill and staff to get further clarification on Options 1 and 3 to address the road issues, if that issue is still alive, but obviously we're going to have to change that and does that change the dollar amount. I don't think Bill's prepared to stand in front of us and say what dollar figure that's going to be.

Mayor Swain asked do you just want to direct Bill and Greg to further elaborate and to find out what the status?

Commissioner Lucas said you need to get what you need for Options 1 and 3 to move this thing forward.

Mr. Coxe said if the Board collectively wants to say we are dropping any further consideration of Option 4, then I will go back to the consultant and ask for a price to just finish up Options 1 and 3. I don't know if it needs to go to another workshop or not. We could at the same time find out what it will take, what the developer's response is on their moving forward. We still need to get a resolution to the road alignment issue.

Commissioner Lucas withdrew his motion.

Commissioner McAulay made a motion to defer this for two weeks.

Commissioner Sisson seconded motion.

Motion carried 4 to 1, with Commissioner Jeter opposed.

CONSENT AGENDA

Approval of Minutes – March 16, 2009. Commissioner McAulay made a motion to approve the minutes of the March 16, 2009 Regular Town Board Meeting. Commissioner Sisson seconded motion. Motion carried unanimously.

Approval of Minutes – March 30, 2009. Commissioner McAulay made a motion to approve the minutes of the March 30, 2009 Regular Town Board Workshop. Commissioner Sisson seconded motion. Motion carried unanimously.

High Efficiency Heat Pump Rebate Program. Senate Bill 3 was passed by the NC General Assembly in 2007 to promote the development of renewable energy and energy efficiency in the state through the implementation of a renewable energy and energy efficiency portfolio standard (REPS). All electric utilities in NC are required to comply with Senate Bill 3.

NC Municipal Power Agency No. 1 (NCMPA1) has launched a High Efficiency Heat Pump Rebate Program to encourage efficient energy use. Residential customers served by Electricities are eligible for a \$400 rebate when a high efficiency heat pump is installed (minimum 14 SEER rating). This program applies to a new installation or existing home replacement. Funding for this program is provided by NCMPA1.

This program requires approval by the Huntersville Town Board in order to be offered to Electricities residential electric customers.

Commissioner McAulay made a motion to approve High Efficiency Heat Pump Rebate Program. Commissioner Sisson seconded motion. Motion carried unanimously.

Capital Project Ordinance – Bradford Park. Commissioner McAulay made a motion to adopt Capital Project Ordinance appropriating \$80,000 of the 2008 Park Bonds for the construction of a playground at Bradford Park. Commissioner Sisson seconded motion. Motion carried unanimously.

**TOWN OF HUNTERSVILLE
BRADFORD PARK PLAYGROUND
CAPITAL PROJECT ORDINANCE**

BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

SECTION 1. The project authorized is the construction of a playground at Bradford Park to be financed by the proceeds from bonds.

SECTION 2. The officers of the unit are hereby directed to proceed with the capital project within the terms of the budget contained herein.

SECTION 3. The following amounts are appropriated for this project:

Construction	<u>\$80,000</u>
TOTAL PROJECT COSTS	<u>80,000</u>

SECTION 4. The following revenues are anticipated to be available to complete this project:

Bond Proceeds:	
2008 Park Bonds	<u>\$80,000</u>
TOTAL PROJECT REVENUE	<u>80,000</u>

SECTION 5. The Finance Director is authorized from time to time to transfer as a loan from the General Fund or unspent bond proceeds in the Capital Projects Funds, cash in an amount necessary to meet obligations until such time as financing is arranged, at which time repayment will be made and the Finance Director is authorized to sign the Declaration of Official Intent to Reimburse Expenditures as required by Internal Revenue Service regulations.

Call for Public Hearing – Long Creek High School Gymnasium. Commissioner McAulay made a motion to call for a public hearing for Monday, May 4, 2009 at 6:30 p.m. at Huntersville Town Hall to consider granting historic designation to the Long Creek High School Gymnasium located at 9213 Beatties Ford Road. Commissioner Sisson seconded motion. Motion carried unanimously.

Call for Public Hearing – Abandon Right-of-way. Commissioner McAulay made a motion to call a public hearing for Monday, June 1, 2009 at 6:30 p.m. at Huntersville Town Hall for a request by American Asset Corporation to abandon a 0.0835 acre (3,635 sq. ft.) portion of public right-of-way located at Keith Hill Road and Everette Keith Road. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – Paving of Streets. Commissioner McAulay made a motion to approve budget amendment appropriating \$200,000 from Powell Bill Fund Balance Reserve to provide for additional paving of town streets. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – Police Department. Commissioner McAulay made a motion to approve budget amendment appropriating funds received in the amount of \$125 for donations from Village of Rosedale HOA (\$100) and JC Nelson/Vector Security (\$25) to the Police Department's budget for crime prevention. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – Police Department. Commissioner McAulay made a motion to approve budget amendment appropriating funds received in the amount of \$12,120.59 from DSC Logistics, Inc. for the month of January to the Police Department's budget for overtime, benefits and vehicle cost. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – Police Department. Commissioner McAulay made a motion to approve budget amendment appropriating funds received in the amount of \$3,268.92 from DDRTC Holdings Pool 3 LLC for the months of December and January and February to the Police Department's budget for overtime and benefits. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – Police Department. Commissioner McAulay made a motion to approve budget amendment recognizing insurance revenue in the amount of \$500 and appropriate to the Police Department's insurance account. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – Police Department. Commissioner McAulay made a motion to approve budget amendment appropriating funds received in the amount of \$8,018.61 from Lake Norman Charter School, Inc. for the months of December and January to the Police Department's budget for overtime, benefits and vehicle costs. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – Police Department. Commissioner McAulay made a motion to approve budget amendment appropriating special revenue carryover funds in the amount of \$5,830.97 to the Police Department budget for the purchase of AED's. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – NMIP. Commissioner McAulay made a motion to approve budget amendment recognizing Community Development Block Grant Program Funds in the amount of \$750,000 and appropriate to North Mecklenburg Industrial Park Sewer Improvements. Commissioner Sisson seconded motion. Motion carried unanimously.

Budget Amendment – Habitat. Commissioner McAulay made a motion to approve budget amendment appropriating funds in the amount of \$25,000 received from the City of Charlotte (Charlotte-Mecklenburg Regional Housing Consortium) to Our Towns of North Mecklenburg-South Iredell Habitat for Humanity (reimbursement for the purchase of a lot located at 315 Dellwood Drive). Commissioner Sisson seconded motion. Motion carried unanimously.

Call for Public Hearing. Commissioner McAulay made a motion to call a public hearing for Monday, June 1, 2009 at 6:30 p.m. at Huntersville Town Hall for a request by American Asset Corporation to close existing Everette Keith Road crossing of the Norfolk Southern rail line at the Alexanderana Road intersection. Commissioner Sisson seconded motion. Motion carried unanimously.

CLOSING COMMENTS

None

There being no further business, the meeting was adjourned.

Approved this the 4th day of May, 2009.