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Town of Lake Lure

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Minutes of the Regular Meeting of the Zoning and Planning Board

Tuesday, March 17, 2009

Lake Lure Municipal Center

Chairman Washburn called the meeting to order at 9:36 a.m.

ROLL CALL

Present: Dick Washburn, Chairman
Tony Brodfuhrer
Bill Bush
Paula Jordan
Donnie Samarotto
Russ Pitts, Council Liaison

Also Present: Shannon Baldwin, Community Development Director
Mike Egan, Legal Counsel
Amos Gilliam, Planner/Subdivision Administrator
Sheila Spicer, Zoning Administrator, Recording Secretary

APPROVAL OF THE AGENDA

Mr. Bush made a motion to approve the agenda. Mr. Brodfuhrer seconded the motion and all were in favor.

APPROVAL OF THE MINUTES

The Board requested that one grammatical error in the minutes of the February 17, 2009 regular meeting be fixed. In the last sentence on page three "they Board" should read "the Board".

Mr. Brodfuhrer made a motion seconded by Mr. Bush to approve the minutes of the February 17, 2009 regular meeting as amended. The motion passed unanimously.

Mr. Brodfuhrer asked that the minutes of the March 3, 2009 special meeting be amended to reflect that he left the meeting early. The Board also pointed out one grammatical

error; the first sentence of the last paragraph on page two should read "comply with paragraphs" instead of "comply paragraphs".

Mr. Brodfuhrer made a motion seconded by Ms. Jordan to approve the minutes of the March 3, 2009 special meeting as amended. The motion passed unanimously.

NEW BUSINESS

Consider a Request to Extend the Preliminary Plat for LureRidge Subdivision

Mr. Gilliam read the following memo that was included in the Board's packet:

MEMORANDUM

To: Z & P Board Members
From: Amos Gilliam, Planner/ Subdivision Administrator
CC: File
Subject: LureRidge Preliminary Plat Approval Extension
Date: February 23, 2009

I have received a request for an extension of the preliminary plat approval for the LureRidge subdivision. The developer is requesting a one year extension to his approval, due to delays described in the attached letter from the developer's representative.

This subdivision was approved on April 15, 2008. A one year extension would set the new deadline for final plat approval at April 15, 2010."

He also mentioned that the developer of the property was present to answer any questions the Board may have.

Mr. Bush reported that Town Council voted not to adopt the amendment to the Subdivision Regulations changing the expiration of preliminary plat approvals from one year to two years. He asked if it was the intent of Town Council that preliminary plat approvals not be extended. Ms. Jordan responded she did not get the impression Town Council was completely against extending the preliminary plats for developments. Commissioner Pitts agreed and stated Council chose to not adopt the amendment because they prefer extensions to be approved on a case by case basis. Mr. Brodfuhrer pointed out that, due to the state of the economy, a one year preliminary plat extension is not unreasonable.

Mr. Bush made a motion to extend the preliminary plat approval for LureRidge subdivision until April 15, 2010. Mr. Brodfuhrer seconded the motion and all were in favor.

OLD BUSINESS

(A) Review Proposed Residential Vacation Rental (formerly Single Family Dwelling-Vacation Rental) Regulations

The Board advised the audience members that public comments, limited to two minutes per person and relevant to the discussion, would be allowed after the Board completed reviewing the proposed Residential Vacation Rental (RVR) regulations.

Mr. Egan pointed out the draft regulations in the Board's packet. He stated these are the same regulations distributed at the previous regular meeting. He mentioned he has made a few modifications to the draft regulations and distributed a copy of these changes. The Board proceeded to review the draft RVR regulations and propose modifications.

The Board asked that the following changes be made to the findings on page two of the draft ordinance:

1. Add health to the list of safeguards in section A.
2. Clarify section B to state that RVRs will possibly be phased out only in the R-1 and R-2 zoning districts.

Referencing the proposed definition of residential vacation rental operator, Mr. Bush questioned the fairness of holding the owner of a RVR accountable if the operator violates the regulations. Mr. Egan stated the intent of the regulations is to ensure that RVR owners are ultimately responsible for the compliance of the RVR as well as the conduct of the operator and verified that the temporary use permit of a RVR would be revoked after a certain number of violations if the regulations are adopted as written. Commissioner Pitts agreed and pointed out that both parties would ultimately be held accountable. He went on to point out that the regulations allow for more than one violation before a permit is revoked and the property owner is notified and given an opportunity to remedy the violation if there is a violation.

In section five of the draft ordinance, Mr. Bush asked how the enforcement staff will know if a dwelling has been rented more than two times in a calendar year. Mr. Egan agreed that it will be difficult to determine and stated the provision will mainly be complaint driven. Commissioner Pitts mentioned the Tourism Development Authority doesn't collect taxes on earnings from rentals of less than two weeks per year. He suggested adding that requirement to section 92.042 (B)(2) of the proposed regulations but stated he would probably request that Town Council strike this provision because he feels it goes against the intent of the regulations. He feels the regulations should apply to all RVRs regardless of how many times a year the residence is rented. Ms. Jordan responded this could place an unfair burden on some property owners and stated she feels a residence that is only rented a couple of times a year will not have a significant impact. Mr. Brodfuhrer pointed out the subcommittee had discussed this issue and did not feel permits should be required for owners who rent their residences to family and friends a

couple times a year. He stated he is in favor of leaving section 92.042 (B)(2) in the proposed regulations with the added provision that the rentals can not exceed two weeks in a calendar year to be considered an exception. He also suggested adding that these rentals must comply with the provisions of the regulations; they are just not required to obtain a permit.

Mr. Egan asked the Board to discuss section 92.042 (B)(3) and (4) of the proposed regulations which exempts bed & breakfast (B&B) establishments from the permit requirements. He asked how the Board wanted to address B&B establishments that have rental units located on an adjacent lot. He reminded the Board that B&B establishments are a permitted use in the R-3 zoning district. Mr. Brodfuhrer responded it was never the intent to require B&B establishments to obtain a RVR permit for their rental units. Mr. Baldwin stated any B&B establishments with a conditional use permit would have to amend the permit to include these adjacent rental units in order to not be required to obtain a permit for each unit. Mr. Egan suggested adding a provision to 92.042 (B)(4) that would also exempt units located on a contiguous parcel to the B&B and within a reasonable distance. The Board agreed and also asked that 92.042 be amended to add any B&B with a valid certificate of zoning compliance permit. Mr. Baldwin offered to have staff map all known B&B establishments in Town limits using GIS to determine the distance of existing rental units from the main business.

The Board then discussed section 92.042 (D) of the proposed regulations which pertains to the contents of the application for a RVR permit. Commissioner Pitts stated another item outlining the occupancy limits should be added to ensure applicants are aware of the requirements at the time they apply. There followed a discussion on the requirements for properties using a septic system. Commissioner Pitts pointed out that this is a major concern and suggested requiring a professional certification that the system is adequate for the number of guests allowed. Mr. Gilliam stated he has discussed this with the Rutherford Polk McDowell District Health Department, and they have advised it will be difficult to find a professional who will be willing to certify the adequacy of a septic system. They suggested requiring owners to submit proof that the system has been pumped out at regular intervals instead. Mr. Gilliam stated the Health Department recommended septic tanks for rental units be pumped out every one to two years depending on the frequency it is rented. Ms. Jordan suggested requiring either proof of a pump out or a valid septic permit for the number of bedrooms listed.

There was a brief discussion on the nuisances listed in section 92.042 (H)(8) of the proposed regulations, and it was suggested that these be removed. Mr. Egan stated he would like to review this further and discuss it with the Board at the next meeting.

Commissioner Pitts asked why RVRs are not addressed in the commercial zoning districts in the proposed regulations. Mr. Egan responded that these districts allow commercial activities, so they were not included. Ms. Spicer stated RVRs should be added as a permitted use in these districts if it the intent that they be allowed, otherwise they would be prohibited. Mr. Egan agreed and stated he would research what provisions of the regulations should apply to RVRs in the commercial districts.

Referencing section 13 of the draft ordinance, Ms. Jordan asked if this would prohibit the Town from studying the effects of the regulatory program at any time other than the year 2014. Mr. Egan responded it would not. Commissioner Pitts suggested adding a statement to that effect and suggested changing the reference to the Community Development Director to Community Development Department. Mr. Egan again stated this section does not prohibit studying the effects of the program at another date. He also recommended leaving the Community Development Director as the designated authority and allow that person to delegate this task if needed.

Mr. Gilliam asked the Board if the proposed regulations should address RVRs in the M-1 and S-1 zoning districts. After a brief discussion, the consensus of the Board was to recommend RVRs as a temporary use in the M-1 district and a permitted use in the S-1 district. This decision was based on the fact that the M-1 district is similar in nature to the R-1A district and the S-1 district is similar in nature to a commercial district except for a lower density.

Mr. Egan stated he would make all of the recommended changes to the proposed regulations and requested that the Board review the regulations one more time before making a recommendation to Town Council. Chairman Washburn then asked if any of the audience members present wished to address the Board about the proposed regulations.

Craig Justice, an attorney present, stated he is representing 11 people who will be affected by the proposed regulations. He distributed copies of Table 11.1 and 11.2 of the 2007-2027 Town of Lake Lure Comprehensive Plan pertaining to acreage in Town limits by zoning district and land use as well as a list of permitted and conditional uses in the R-1, R-2, R-3, and R-4 zoning districts. He mentioned several past court cases that described Lake Lure as a place that attracts residents and tourists and as being primarily resort and recreational in nature. He pointed out that the existing Town regulations seem to be structured to encourage tourism and stated he feels singling out RVRs is against the nature of the intent of other regulations. He also pointed out there are no other occupancy requirements for residential uses and questioned why it is to be regulated for RVRs. Mr. Justice stated only 1.5% of the Town is zoned commercial, and he doesn't feel it is a concession to allow RVRs as a permitted use in this limited district. He stated B&B establishments are allowed to continue operation no matter how many violations occur and feels it is unreasonable to not allow the same standard for RVRs. Mr. Justice declared he feels it is not legal to regulate RVRs in a manner different from the way timeshares are regulated. He feels the only fair way to regulate RVRs is to allow them as a conditional use in the R-1 and R-2 zoning districts and as a permitted use in the R-3 and R-4 districts. He stated he would like to have a workshop with the Board and the clients he is representing to come up with regulations that would be a benefit to all parties involved. Mr. Justice then commented on the level of participation during the meeting from the council liaison.

Mr. Brodfuhrer responded to Mr. Justice and stated timeshares were discussed by the stakeholder committee. He mentioned timeshares were not considered to be a single family residence, so the committee chose not to address them. Mr. Justice asked the Board if there is any specific data that suggests vacation renters have more of an impact than long-term renters or permanent residents. Mr. Brodfuhrer asked why a RVR that cannot comply with the regulations should be allowed to continue due to the fact that the regulations address public health and safety concerns. He pointed out that the regulations do not prohibit RVRs that comply with the regulations. Mr. Justice responded that having a sunset clause has the same effect as prohibiting them.

An audience member who did not identify herself asked for the Board's permission to allow her minor daughter to address the Board. Chairman Washburn granted the request. Christina Potter identified herself as a twelve year old who lives at 176 Caddy Lane. Ms. Potter stated her family includes her single parent, her four siblings, and herself. She pointed out that most B&B establishments and hotels do not allow more than four guests per room and require an adult in each room. She asked where a family the size of hers would be allowed to stay if RVRs were no longer allowed.

Mr. Brodfuhrer stated the proposed regulations would be discussed again at the next regular meeting.

(B) Review of Bylaws

Mr. Brodfuhrer pointed out that the Board has attempted several times to address in the bylaws the issue of how new projects will be undertaken. Chairman Washburn agreed and stated this is because the Board has been following the process for quite some time of getting Town Council approval prior to working on new amendments to the regulations. He mentioned he feels it is important to have this procedure addressed in writing. Mr. Egan advised the Board to not put this procedure in the bylaws and instead amend the regulations to mandate this procedure if the Board feels this should be a permanent procedure. Mr. Baldwin stated staff has been working on a standard operating procedure for amending Town regulations and asked if the Board's concerns could be addressed in these procedures. Chairman Washburn stated getting Town Council approval is also another way of notifying the public about amendments that are being discussed. Mr. Egan again advised against adding an amendment procedure to the bylaws as he feels it is not in line with the purpose of the bylaws. He asked the Board to review the standard operating procedure being drafted by staff to determine whether this could alleviate their concerns.

The Board reviewed the proposed bylaws in their packets. These bylaws were drafted by Mr. Egan and sent to the Board prior to the previous meeting. They requested that the following amendments be made to the draft:

1. Strike the words "and alternate" in the first sentence of article VI section 2 since there are no alternate members on the Board.

2. Change the first sentence of article VI section 8 to state the Board has the option of amending the order of business at the meeting.

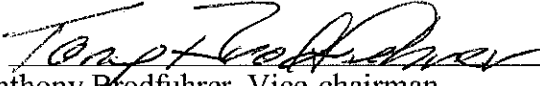
Mr. Bush moved that the bylaws be adopted as amended. Mr. Brodfuhrer seconded and the motion passed unanimously.

ADJOURNMENT

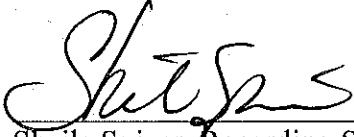
Mr. Bush made a motion seconded by Mr. Brodfuhrer to adjourn the meeting. The motion passed unanimously.

The meeting was adjourned at 12:10 p.m. The next regular meeting is scheduled for Tuesday, April 21, 2009 at 9:30 a.m. at the Lake Lure Municipal Center.

ATTEST



Anthony Brodfuhrer, Vice-chairman



Sheila Spicer, Recording Secretary