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Town of Lake Lure

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Minutes of the Regular Meeting of the Zoning and Planning Board

Tuesday, May 19, 2009

Lake Lure Municipal Center

Chairman Washburn called the meeting to order at 9:35 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. Brodfuhrer made a motion to approve the agenda. Ms. Jordan seconded the motion and all were in favor.

APPROVAL OF THE MINUTES

Mr. Brodfuhrer made a motion seconded by Ms. Jordan to approve the minutes of the April 21, 2009 regular meeting as presented. The motion passed unanimously.

OLD BUSINESS

(A) Joint Discussion with Town Council Pertaining to Performance Guarantees

Mr. Baldwin pointed out the Improvement Guarantees for Major Subdivisions pamphlets and the subdivision flowcharts distributed prior to the meeting. Chris Braund, town

manager, reminded the Board and Town Council he asked them to discuss improvement guarantees and determine whether offering surety performance bonds is in the best interest of the Town and, if so, to discuss ways to avoid the risks other communities have dealt with. Mayor Proctor asked if Town staff has researched whether other municipalities accept surety performance bonds for subdivision improvement guarantees. Mr. Gilliam responded he has polled other communities and while they are not comfortable with the risks associated with this method of guarantee, they do still allow them as an option. He mentioned however that some communities do limit the amount of improvements that can be bonded. Mr. Egan pointed out that he is not aware of any municipality that doesn't offer surety performance bonds as an option. He stated the Town needs to institute standards for accepting bonds, and suggested one way to reduce the risks associated with them is to ensure the bonding company has a good rating.

Mayor Proctor stated he would like research to be done on whether to require a certain amount of a subdivision's infrastructure to be completed prior to accepting an improvement guarantee. Commissioner Pitts agreed and stated research should be conducted on ways to tighten the procedures for accepting improvement guarantees before considering eliminating one of the guarantee options. Chairman Washburn suggested only allowing a major subdivision to post an improvement guarantee for smaller phases instead of the entire project. Mr. Gilliam agreed that this would be one way to limit the amount that could be bonded.

Mr. Brodfuhrer advised that the subdivision regulations need to clarify that Town Council is the body that approves improvement guarantees, not the Zoning and Planning Board. Mr. Braund suggested that Town Council may want the Zoning and Planning Board to review an improvement guarantee first and then make a recommendation to Town Council.

John Cloud, a member of the audience and a local developer, stated that while Mr. Gilliam is doing a good job of managing the current securities being held by the Town, this has not always been the case. He also asked that a guarantee option not be taken away merely because it may involve more work for Town staff.

(B) Review Regulations Pertaining to Residential Vacation Rentals (formerly Single Family Dwelling-Vacation Rentals) and Make a Recommendation to Town Council

Mr. Egan stated the proposed Residential Vacation Rental (RVR) Regulations have been revised and pointed out the latest draft included in the Board's packet. He also pointed out the conveying memo he included that outlines the revisions to the proposed regulations. This memo reads as follows:

MEMORANDUM

To: *Zoning & Planning Board*

From: *Michael Egan, Community Development Attorney*

Date: 8 May 2009

Subject: Residential Vacation Rental Ordinance

As reported at the April meeting of the Board, an ad hoc group has worked with me to modify the draft Residential Vacation Rental Ordinance to address some of the concerns and issues received during the course of the Board's deliberation on the matter. This group consisted of Board members, Tony Brodfuhrer and Paula Jordan, and Board liaison, Russ Pitts, along with the staff of the Community Development Department. The revised draft ordinance, a copy of which accompanies this memorandum, differs substantially from the draft last seen by the Board. As a result, I have opted to dispense with strike-through and underlining and, for ease of digestion, to provide the Board with a clean copy. In the summary of the ordinance which follows, I will make note of significant departures.

Section One. *Section One now includes statutory references for the authority for the Ordinance. These include the general ordinance-making power, or police power, delegated to municipalities in NCGS 160A-174, the authority to regulate occupational licenses contained in NCGS 160A-194, and the zoning authority contained in NCGS 160A-381.*

Section Two. *The findings section has been made considerably more robust and has been refined to more clearly state the Town's purpose in enacting the ordinance.*

Section Three. *The definitions section has been amended to include a definition for resort. This has been done because resorts have been added to the list of exceptions contained in §92.042(B). This definition already existed in the Town's sign regulations.*

Section Four. *This section, which would create a new §92.042 of the Zoning Regulations dealing with residential vacation rentals, has been substantially revised.*

(A) Use Recognized. *This paragraph specifically recognizes residential vacation rentals as a use and makes it a violation to operate a residential vacation rental without either a temporary use permit or a certificate of zoning compliance.*

(B) Occupational License Required. *This paragraph makes it unlawful to engage in the occupation of residential vacation rental operator without an occupational license from the Town.*

(C) Exceptions. *This paragraph excepts certain uses / activities from the definition of residential vacation rental. Rentals of property in the commercial zoning districts has been deleted from this use. Accordingly, operators of residential vacation rentals in those districts will have to obtain a certificate of zoning compliance and an occupational license. The exception for incidental vacation rentals has been limited to no more than two such rentals "where the*

total annual rental period does not exceed two weeks." Resorts containing at least 75 acres and with onsite property management have been added to the list of exceptions.

(D) Application for Certificate of Zoning Compliance. *While the revised ordinance leaves residential vacation rentals as temporary uses in the various R-1, R-2 and M-1 districts, it makes them permitted uses subject to special requirements in the Town's remaining zoning districts. Residential vacation rentals in the former districts are required to obtain a temporary use permit which must be renewed on an annual basis. Furthermore, residential vacation rentals in such districts are scheduled for sunset (subsequent to which they will be prohibited) on 31 December 2016 unless Town Council repeals the sunset provision in the meantime. Residential vacation rentals in the remaining districts merely have to obtain an initial certificate of zoning compliance which need not be renewed; although, the operators of such residential vacation rentals will need to renew their occupational licenses annually.*

(E) Contents of Application. *This paragraph contains the application requirements for a certificate of zoning compliance for a residential vacation rental. These same requirements apply to applications for a temporary use permit, as well. This paragraph has been amended to (1) specify how the application is to demonstrate adequacy of the septic system and (2) to include an acknowledgment that the applicant is aware of, and will comply with, the occupancy restrictions relating to residential vacation rentals.*

(F) Inspections. *This paragraph has not been amended. It provides for two types of inspections: (1) an initial inspection associated with an application, and (2) occasional inspections to confirm compliance with Town regulations.*

(G) Review of Application. *This paragraph sets forth the standards of review for residential vacation rentals applying for a certificate of zoning compliance.*

(H) Duties of the Operator to Respond to Complaints. *This paragraph sets forth the operator's duties, including the responsibility to (1) maintain a 24 / 7 complaint hotline, (2) ensure that a responsible party be on site within one hour of the lodging of a complaint, and (3) ensure that occupants and guests comply with applicable laws and regulations.*

(I) Operational Requirements. *This paragraph sets forth operational requirements relating to occupancy limits, signs, the posting of permits, the display of contact information, parking, liability insurance, trash disposal and the conduct of occupants & guests. The only substantive changes from the previous draft are the deletion of the prohibitions against the parking of vehicles on portions of the property designated or intended for yard or lawn and of parking in the right-of-way contained in subparagraph (5). The Town's regulations in this regard ought to be consistent whether one is a permanent resident or transient. If*

parking in the right-of-way constitutes a threat to the public safety or welfare, the Town Code should be amended to address that threat.

*(J) **Contract Addendum.** This paragraph requires that every residential vacation rental agreement contain an addendum advising renters of the requirements of the ordinance and other applicable regulations. It is unchanged from the previous draft.*

*(K) **Temporary Use Permits.** This paragraph contains requirements which apply only to residential vacation rentals which are classified as temporary uses, that is, those situated in the R-1, R-2 and M-1 zoning districts. It provides that temporary use permits for residential vacation rentals expire on 31 December of each year. It further provides that such temporary use permits may be revoked if (a) the application contained false information or (b) three or more violations of the requirements of the ordinance have occurred in any calendar year. The permit revocation provisions, which were in paragraph (J) of the previous draft, have been amended to delete the paragraph authorizing revocation for two or more violations of the North Carolina Vacation Rental Act or the Rutherford County Tourism Development Authority. The working group felt the Town should limit itself to enforcement of its own regulations, not those of other agencies.*

Note that paragraph (K) of the previous draft has been deleted as unnecessary. The Zoning Regulations already provide that decisions of the Zoning Administrator may be appealed to the Board of Adjustment.

***Sections Five - Fifteen, Seventeen.** These sections make residential vacation rentals either a temporary use or a permitted use subject to the requirements of §92.042. Residential vacation rentals are temporary uses in R-1, R-1A, R-1B, R-1C, R-1D, R-2 & M-1. They are permitted uses in R-3, R-4, C-1, CN, CTC, CG & S-1 districts.*

***Section Sixteen.** Boarding and rooming houses, non-profit retreats and non-profit lodges are deleted as conditional use in the R-2 Zoning District.*

***Section Eighteen.** This section provides for the expiration of the temporary use of residential vacation rentals in the R-1, R-1A, R-1B, R-1C, R-1D, R-2 & M-1 districts on 31 December 2016 unless this section is repealed prior thereto.*

***Section Nineteen.** Provides that in the year 2014 the Community Development Director shall conduct a study of the effects of the regulatory program contained in this ordinance and report the findings and conclusions of such study to Town Council.*

Also accompanying this memorandum is a table presenting an excellent short-hand summary of the Ordinance.

Mr. Brodfuhrer, referencing section 19 of the memo, stated he feels the Community Development Director should report findings to Town Council on an annual basis, not just in the year 2014. Mr. Egan advised that this be made a recommendation if that is

what the Board wants but advised against making it a requirement in the regulations. Mr. Baldwin agreed and pointed out that he currently provides an annual report to Town Council and could easily add this information as well.

Commissioner Pitts asked if the county building inspector has been questioned about building code requirements for RVRs. Mr. Gilliam responded that, according to the county, these structures would be treated the same as any other single family dwelling and not as commercial buildings, but he mentioned he is waiting on verification of this from the Attorney General's office. Mr. Egan stated he spoke to the fire marshal who also said these structures would not be considered as commercial buildings by the state fire code.

During the review of the proposed regulations, Mr. Brodfuhrer voiced that he does not feel an annual inspection is needed for the renewal of a temporary use permit unless changes are being made. Mr. Bush stated he feels a more comprehensive definition is needed for a resort. He pointed out that neither Lake Lure Village Resort nor River Bend has dining or lodging facilities; however, both are more suited to the R-3 zoning district. Mr. Brodfuhrer, using Rumbling Bald Resort as an example, responded the main reason for the definition for resort and excluding these resorts from the proposed regulations is because of the onsite management and as well as the onsite security that is offered in these resort.

Mr. Baldwin discussed a suggested timeframe for the next steps involved in the adoption of the proposed regulations. This timeframe would allow for one more review of the regulations by the Board prior to making a recommendation to Town Council. Mr. Egan stated the reason for postponing the Zoning and Planning Board's recommendation until the June 16, 2009 meeting is to allow more time for the public to review the regulations and offer comments.

Chairman Washburn asked if any of the audience members wished to address the Board.

Craig Justice, an attorney with Van Winkle Law Firm representing 24 property owners in Lake Lure, asked who the members of the subcommittee are that have review the proposed regulations and suggested the changes. Mr. Egan responded that the members of the subcommittee were Mr. Brodfuhrer, Ms. Jordan, Commissioner Pitts, the Community Development Department staff, and himself. Mr. Justice then asked if the intent is to regulate timeshares as well. Mr. Egan responded that it is not and pointed out that is another reason for excluding resorts as defined by the regulations. Referencing security, Mr. Justice mentioned that, while Rumbling Bald Resort does have an onsite security force, many of the calls to the Lake Lure Police Department during 2006-2008 were received from this resort. He also pointed out that the proposed regulations do not require bed and breakfast establishments to close in seven years as is being proposed for RVRs in the R-1 and R-2 zoning districts. Mr. Justice then questioned how septic problems or traffic problems are exclusive to RVRs. He stated as long as the amortization provision is still in the proposed regulations a law suit will continue to be pursued by the clients he represents.

Tyrone Phillips, a citizen of Lake Lure, pointed out that, while the town was originally designed as a resort community, vacation homes were not usually rented. He also pointed out that the R-1 and R-2 zoning districts were created in the 1970's for the primary use of land to be used as single family residences. Mr. Phillips mentioned that, while he was serving on the stakeholder committee, research was conducted by the committee on the impacts of RVRs on septic and traffic.

Jocelle Allen, also a member of the stakeholder committee, stated Lake Lure has changed significantly due to the more expensive houses being built. This has caused property taxes to increase necessitating some property owners to rent their homes in order to keep them. She stated the stakeholder committee did not conduct a survey because Commissioner Pitts did not want one done and his wife who served on the committee insured that it did not happen. Ms. Allen also stated the stakeholder committee was engineered to give the findings that were already predetermined.

George Pressley who also served on the stakeholder committee responded that a survey is not accurate unless the public is educated about the topic being discussed. He pointed out that he was the one who did not want to have a survey done, not Commissioner Pitts as Ms. Allen had stated.

Tom Cox, another member of the stakeholder committee, stated he is still unsure of what the problems with RVRs are and pointed out that RVRs have never been regulated in the past.

Nancy McNary served on the stakeholder committee and addressed the Board stating she feels these regulations are the best hope for protecting the community.

John Kilby, a citizen of Lake Lure, stated he has been a full-time resident since 1994 and mentioned he has had many wonderful experiences with neighboring vacation renters. Paula Moore also stated she has had many positive experiences with vacation renters and pointed out that she first met her best friend while this friend was staying at the Lodge on Lake Lure.

Jane Mann addressed the Board and stated she is a full-time resident of Lake Lure. She mentioned that she has to rent her home in order to pay the property taxes. She also stated she has researched other lake communities that do not regulate RVRs.

David Klett, another Town citizen, stated he feels the comments in section 2 (B) of the proposed ordinance are extremely negative.

Carol McKay stated she was also a member of the stakeholder committee which she feels did not follow the original directive of Town Council. She pointed out that an economic study has not been addressed yet. She testified that her rental management company has generated \$40,000 to the Tourism Development Authority and pointed out that these funds would be lost if vacation rentals are discontinued.

Mr. Cloud stated the Town is overlooking the fact that transients provide the key economic means that drives the community. He advised that people will not be able to come and experience the Town if the ability to stay in RVRs is taken away.

Mr. Baldwin assured the Board that Mr. Egan would complete the final draft and staff would have it posted on the Town website as soon as possible. He stated the Board would allow more time at the next regular meeting for more comments prior to making a recommendation to Town Council. Ms. Jordan asked the audience to read the proposed regulations objectively once they are posted online. She then asked that they let the Board know if they have constructive suggestions on a better way to handle RVRs. She advised that comments could be emailed, sent by mail, or given at the next meeting.

NEW BUSINESS

Mr. Bush made a motion to discuss item 5. (B) prior to item 5. (A). Ms. Jordan seconded the motion and all were in favor.

(B) Consider a Request to Extend the Preliminary Plat for The Ridge at Firefly Cove Phase II

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

MEMORANDUM

To: Z & P Board Members

From: Amos Gilliam, Planner/ Subdivision Administrator

CC: File

Subject: Phase II Ridge at Firefly Cove Preliminary Plat Approval Extension

Date: June 18, 2009 13, 2009

I have received a request for an extension of the preliminary plat approval for Phase II of the Ridge at Firefly Cove 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 June 17, 2008. A one year extension would set the new deadline for final plat approval at June 17, 2010.

Mr. Bush moved to extend the preliminary plat for Phase II of the Ridge at Firefly Cove as requested. Ms. Jordan seconded the motion.

Mr. Baldwin asked Mr. Gilliam to brief the Board on an issue raised by the Town Manager who was no longer present. Mr. Gilliam stated Mr. Braund had raised concerns over the condition of the access road located in this development that leads to a water tower and station now being maintained by the Town. Mr. Cloud responded that no discussions have been held with him concerning this issue and expressed his disappointment that the issue would be raised at this time. He pointed out that he has always been willing to work with the Town in any way possible and is willing to continue doing so. He admitted that the roads have not been completed due to the difficult economic times but does not feel there should be a problem accessing the water tower, especially in light of the fact that the public works vehicles are four wheel drive trucks.

Mr. Bush stated he feels this is not an issue to be discussed by the Board and asked that a vote be held on the motion.

All members voted in favor of granting the preliminary plat extension.

(A) Review and Approve the Final Plat for Lure Ridge Subdivision

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

MEMORANDUM

TO: Zoning and Planning Board

FROM: Amos Gilliam, Planner

CC: Shannon Baldwin, Community Development Director

DATE: May 12, 2009

RE: LureRidge Subdivision Final Plat

Directions to Site

From Town Hall, take Memorial Hwy East. The property is on the right, at the site of the former L.M. Pearson Realty Office. The property is also adjacent to Tryon Bay Circle (see plans).

Request

The applicant, Lake Lure 25 llc, is requesting final plat approval for the first phase of the LureRidge Subdivision located on the hill between Tryon Bay Circle and Memorial Hwy. The final plat creates 26 new lots, which are compliant with the minimum conservation design standards for the underlying Zoning Districts.

Background Information

The property in question was rezoned to allow to R-1C on the north side of the hill, and R1-B to obtain densities in keeping with the developers wishes. The Zoning and Planning Board approved the preliminary plat for this project April 15, 2008, and extended this approval on March 21, 2009. This project was the first subdivision approved after the conservation design requirements were incorporated into the subdivision regulations.

Public Utilities

The developer has completed the installation of a public water supply system within the road right of way, which has been inspected and approved by the Public Works Director. The lots will utilize on site wastewater treatment systems. The developer has provided copies of approved permits from the Rutherford County Health Department for all lots represented on this final plat.

Roads

The developer has constructed one road (LureRidge Road) to Town Standards, which has been inspected and approved by both the Public Works Director and the Fire Chief. The second private road (Black Rock Road) is constructed as a private lane at this time, but will need to be widened to 18' at the time of construction of any non residential facility, or at such time as the Highlands of Lake Lure should connect this road to their internal road system.

Erosion Control and Drainage

This development will be required to work with the Erosion Control Officer (ECO) to maintain all appropriate permits, and keep to keep sediment on site.

Amenities and Common Areas

The developer has reserved common areas for compliance with the Conservation Subdivision Design Standards; the area in such common space is approximately 25% of the current phase of the development. These areas may be used for recreational trails to be used by the residents of the subdivision. The developer has also proposed a private club house for the residents of LureRidge and The Highlands of Lake Lure; this amenity will be constructed on commonly held lands, but is not included in the protected areas.

Fire Protection

The developer will place a total of six fire hydrants throughout the development, and one blow off hydrant at the end of LureRidge Road. These hydrants have been tested and shown to provide the required fire flows by the Fire Chief.

Additional Information

Please see the plats included for your review. If you have any questions regarding the plans or the meeting please do not hesitate to contact me at psa@townoflakelure.com

Mr. Bush pointed out that the final plat checklist states the Board will inspect the property and asked if this is a requirement. Mr. Gilliam responded it is not required by the regulations. Ms. Jordan mentioned that she drove through the development prior to the meeting and stated it is a beautiful area and praised the developer's efforts. She

mentioned that the roads have been screened from surrounding areas but expressed concerns about this screening once homes begin to be built. Mr. Gilliam pointed out that the land disturbance permit for this project is still open and Clint Calhoun, the Town's environmental protection officer, will continue to monitor the site. Commissioner Pitts praised the erosion control measures being used and mentioned the Town is copying some of these measures on its own projects.

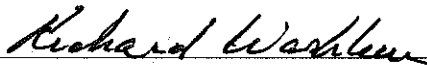
Mr. Brodfuhrer made a motion seconded by Mr. Samarotto to approve the final plat for Lure Ridge Subdivision. The motion passed unanimously.

ADJOURNMENT

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

The meeting was adjourned at 12:05 a.m. The next regular meeting is scheduled for Tuesday, June 16, 2009 at 9:30 a.m. at the Lake Lure Municipal Center.

ATTEST


Richard Washburn, Chairman


Sheila Spicer, Recording Secretary