

Incorporated 1927

Town of Lake Lure

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MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, OCTOBER 25, 1994, 7:30 P.M. AT THE LAKE LURE COMMUNITY CENTER

PRESENT: Mayor Max E. Lehner
Mayor Pro-tem Bud Schichtel
Commissioner Bill Bush
Commissioner Bill Church
Commissioner Jack Donovan

Paul Wilson, Interim Town Manager
Sam Karr, Finance Director
J. Christopher Callahan, Town Attorney

ABSENT: N/A

CALL TO ORDER

Mayor Lehner called the meeting to order at approximately 7:30 p.m.

INVOCATION

Attorney Callahan gave the invocation.

APPROVAL OF MINUTES

Commissioner Schichtel moved, seconded by Commissioner Bush, to approve the minutes of Tuesday, September 27, 1994 Regular Council Meeting, the minutes of the Tuesday, October 11, 1994 Regular Council Meeting, and the minutes of the Thursday, October 13, 1994 Recessed Regular Council Meeting as written. The vote of approval was unanimous.

AUDIENCE OF CITIZENS

At the request of Mayor Lehner, Architect Carroll Hughes, President of Spaceplan Architects, explained to Lake Lure citizens that the building site for the new Government Center was not in a flood zone.

Hugo Moirano, resident of Lake Lure, inquired into a comparison of revenues from boat permits and the Lake Lure Tours for this year and last year.

Mayor Lehner stated that the 1994 "Tour Boat" franchise income has far exceeded the 1993 "Showboat Tour" franchise income in the previous year. He also stated that even with the increase of boat permit fees (out-of-town residents) the boat permit income was higher this year than the previous year.

Carolyn Cobb, resident of Lake Lure, addressed Council with a question as to how much will the Lake Lure Gazebo cost (exact cost). Ms. Cobb also stated that the Gazebo was beautiful the way it is now and would like for it to remain unchanged.

FINANCING OF NEW GOVERNMENT CENTER

Dennie Martin with McGill Associates presented Council with a list comparing the six financing proposals for the proposed Municipal Building Complex. The proposals were from First Union, First Citizens, Branch Bank and Trust, Southern National, Centura, and Koch Financial Corp. Mr. Martin said the best proposal was from Southern National and was the lowest bid of the six. Mr. Martin recommended that the Town accept Southern National proposal. (Attached copies of list of six proposals and Southern National proposal).

Attorney Chris Callahan read aloud the following proposed resolution (94-10-25A) authorizing the filing of an application for approval of a financing agreement authorized by North Carolina General Statute 160A-20:

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RESOLUTION 94-10-25A

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE §160A-20

WHEREAS, the Town of Lake Lure, North Carolina desires to construct a new municipal building (hereafter called the Project) to better serve the citizens of the Town of Lake Lure; and

WHEREAS, the Town of Lake Lure desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, Findings of Fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article B, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Town of Lake Lure, North Carolina, meeting in regular session on the 25th day of October, 1994, make the following Findings of Fact:

1. The proposed contract is necessary or expedient because the existing municipal buildings are too small and exhibit code deficiencies and the most cost-effective means of providing the needed spaces for the Town is by developing a new office and community building.

2. The proposed contract is preferable to a bond issue for the same purpose because 1) the total costs of the Project is not sufficient to warrant the expenses involved in a General Obligation Bond issue; 2) the Project costs are too expensive to be funded through current revenues and/or fund balance, thus the contract method of financing proves to be the best alternative for the Town of Lake Lure; the desired term of financing is 10 years or less, thereby making bonds a less desirable alternative.

3. The sum to fall due under the contract will be adequate and not excessive for the proposed purpose and the rate of interest will be only nominally higher than that of a general obligation bond issue, when considering total costs involved in a referendum advertisements, legal expenses, etc. Town of Lake Lure used the competitive bidding process to obtain lowest possible cost.

4. The Town of Lake Lure's debt management procedures and policies are good because the Town of Lake Lure adheres to the Budget Ordinance, provides for debt service payments and interests as a first priority, and uses a Purchase Order System to control expenditures. The Town Clerk and the Town Manager are constantly monitoring the Town's fiscal structure.

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5. The Town of Lake Lure believes that no tax increase is necessary for this Project.
6. The Town of Lake Lure is not in default in any of its debt service obligations.
7. The Attorney for the Town of Lake Lure has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.
8. The probable net revenues of the project to be financed will be sufficient to meet the sums to fall due under the proposed contract.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor is hereby authorized to act on behalf of the Town of Lake Lure in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and other actions not inconsistent with this resolution.

This resolution is effective upon its adoption this 25th day of October, 1994.

Commissioner Bill Bush moved, seconded by Bud Schichtel, to adopt the resolution as written. The vote of approval was unanimous (4 to 0).

Attorney Chris Callahan read aloud the following proposed resolution (94-10-25B) approving an installment purchase contract and related matters:

RESOLUTION 94-10-25B

RESOLUTION OF THE TOWN OF LAKE LURE, NORTH CAROLINA APPROVING AN INSTALLMENT PURCHASE CONTRACT AND RELATED MATTERS

WHEREAS, the Town of Lake Lure (the "Town") is a validly existing municipal corporation of the State of North Carolina, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the "State");

WHEREAS, the Town has the power, pursuant to North Carolina General Statutes, to (i) purchase property and construct facilities and (ii) enter into installment purchase contracts in order to finance the purchase of property used, or to be used, for public purposes;

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WHEREAS, the Town has determined and hereby determines, that it is in the best interests of the Town to enter into an Installment Purchase Contract dated as of November 15, 1994, (the "Contract") with Southern National (the "Vendor") in order to provide for the construction, acquisition, improvement and equipping of and make available to the Town a new municipal building for the purpose of administration, law enforcement and conference rooms described in Exhibit A of the Contract (the "Project");

WHEREAS, the Town has determined and hereby determines, (i) that the Facilities are essential to its proper, efficient and economic operation and will provide an essential and necessary function permitting the Town to carry out certain of its public functions which will facilitate the economic development of the Town, (ii) that the Town anticipates an ongoing need for the Project; and (iii) that entering into the Contract and the Deed of Trust (as defined below) are necessary and expedient for the Town by virtue of the findings presented herein;

WHEREAS, the Town has determined and hereby determines, that the purchase price of the Project exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and nonvoted bonds that could be issued by the Town in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

WHEREAS, the Town has determined and hereby determines that the Contract and the Deed of Trust and the obligations of the Town thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (i) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; and (ii) the time required for a general obligation bond election would cause an unnecessary delay which would thereby increase the cost of acquiring the Project in light of the favorable interest rates currently available to the Town in the financial market place;

WHEREAS, the estimated cost of financing the Project pursuant to the contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking;

WHEREAS, the obligation of the Town to make Installment Payments and Additional Payments (each as defined in the Contract) shall constitute a limited obligation payable solely from currently budgeted appropriations of the Town and shall not constitute a pledge of the faith and credit of the Town within the meaning of any constitutional debt limitation;

WHEREAS, in order to secure the Town's obligations under the Contract, the Town will enter into the Deed of Trust dated as of November 15, 1994 with the Deed of Trust Trustee named there, for the benefit of the Vendor;

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WHEREAS, no deficiency judgment may be rendered against the Town in any action for breach of a contractual obligation under the Contract, and the taxing power of the Town is not and may not be pledged in any way directly or indirectly or contingently to secure any monies due under the Contract;

WHEREAS, the taxing power of the Town will not be pledged directly or indirectly to secure any monies due to the Vendor;

WHEREAS, there has been presented to the Town Board of Commissioners (the "Board") the following documents (collectively, the "Instrument"). Copies of which are attached hereto, which the Town propose to approve, enter into and deliver, as applicable, to effectuate the proposed purchase financing;

- (1) the form of the Contract; and
- (2) the form of the Deed of Trust.

WHEREAS, it appears that each of the Instruments is in appropriate form and is an appropriate instrument for the purposes intended;

WHEREAS, the Board did conduct a public hearing on October 25, 1994 to receive public comment on the proposed Contract to finance the Facilities;

WHEREAS, the annual sum to fall due under the Contract will not exceed \$164,000 and can be included in the Town's budget;

WHEREAS, it is reasonable to conclude that the payments under the Contract are not excessive for the stated purpose of acquiring and constructing the Project and no increase in the property tax rate will be required to raise funds to fall due under the Contract in each fiscal year during the term of the Contract;

WHEREAS, the Town Attorney is of the opinion that this transaction is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina;

WHEREAS, the Town has further determined and hereby expresses its determination that the Installment Payments, the Additional Payments and all other obligations of the Town under the Contract and the Deed of Trust are not excessive for their stated purposes;

WHEREAS, the Town hereby determines that all findings, conclusions and determinations of the Town in the Resolution adopted by the Board of Commissioners on October 11, 1994 and October 25, 1994 are fully affirmed;

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WHEREAS, the Town's budget process and Annual Budget Ordinance is in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the Town has conformed with the generally accepted accounting principles in preparing its Annual Budget Ordinance;

WHEREAS, past audit reports of the Town indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law and the Town has not been censured by the North Carolina Local Government Commission (the "LGC"), external auditors, or any other regulatory agencies in connection with such management;

WHEREAS, the Town will promptly file an application to the LGC for approval of the Contract after adoption of this Resolution;

WHEREAS, the Town is not in default in meeting any of its debt service or contract obligations;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF LAKE LURE, NORTH CAROLINA AS FOLLOWS:

Section 1. That all actions of the Town in effectuating the proposed financing are hereby approved, ratified and authorized pursuant to and in accordance with the transactions contemplated by the Instruments.

Section 2. That the Town approves the purchase of the Project in accordance with the terms of the Contract, which will be a valid, legal and binding obligation of the Town in accordance with its terms. The form and content of the Contract are in all respects authorized, approved and confirmed, and the Mayor and the Town Clerk are authorized, empowered and directed to execute and deliver the Contract for and on behalf of the Town, including necessary counterparts, in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions, or deletions, and that from and after the execution and delivery of the Contract, the Mayor and the Town Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Contract as executed.

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Section 3. That the form and content of the Deed of Trust are in all respects approved and confirmed, and the Mayor and the Town Clerk are authorized, empowered and directed to execute and deliver the Deed of Trust for and on behalf of the Town, including necessary counterparts, in substantially the form attached hereto, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions, and that from and after the execution and delivery of the Deed of Trust, the Mayor and the Town Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as they may be necessary to carry out and comply with the provisions of the Deed of Trust as executed.

Section 4. That the Mayor is hereby designated as the Town's representative to act on behalf of the Town in connection with the transactions contemplated by the Instruments, and the Mayor is authorized and directed to proceed with the construction and purchase of the Project in accordance with the Instruments, and to seek opinions as a matter of law from the Town Attorney, which the Town Attorney is authorized to furnish on behalf of the Town, and opinions of law from such other attorneys for all documents contemplated hereby as required by law. The Town Clerk and the Mayor are authorized to execute and deliver for and on behalf of the Town any and all additional certificates, documents, opinions or other papers and perform all other acts as may be required by the Instruments or as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 5. That if any section, phrase or provisions of this Resolution is for any reason declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 6. That all motions, orders, resolutions, ordinances and parts thereof, in conflict herewith are hereby repealed.

Section 7. This Resolution is subject to the Town actually awarding a Construction Contract to any bidder or group of bidders, and future provided installment financing is approved by the Local Government Commission.

Section 8. That this Resolution shall become effective on the date of its adoption.

Commissioner Schichtel moved, seconded by Commissioner Bush, to adopt the resolution as written. The vote of approval was unanimous (4 to 0).

OTHER OLD BUSINESS

There was no other old business.

**CALL FOR PUBLIC HEARING REGARDING
PROPOSED AMENDMENTS TO SECTION 401 AND 606 OF THE
ZONING ORDINANCE**

Mary Lynn Ray, Deputy Zoning Administrator, read aloud a memorandum of October 18, 1994 addressed to Council regarding proposed amendments to Sections 401 and 606 of the Zoning Ordinance as recommended by the Lake Lure Zoning and Planning Board. (Memorandum attached).

Commissioner Donovan moved, seconded by Commissioner Bush, to hold a Public Hearing on Tuesday, November 8, 1994, 9:30 a.m. at the Lake Lure Town Hall to consider recommended amendments at the regular Town Meeting. The vote of approval was unanimous.

**GUARANTEE OF PERFORMANCE FOR PLANNED UNIT
DEVELOPMENT -- SHARON AND SCOTT THEISS**

Deputy Zoning Administrator Mary Lynn Ray read aloud a memorandum of October 21, 1994 addressed to Council regarding a proposed agreement by and between Sharon and Scott Theiss, developers, and the Town of Lake Lure regarding a Guarantee of Performance for Planned Unit Development. (Memorandum attached).

Commissioner Bush moved, seconded by Commissioner Church, to approve the agreement by and between Sharon and Scott Theiss, developers, and the Town of Lake Lure as presented. The vote of approval was unanimous. (Agreement attached).

**AGREEMENT RELATIVE TO GUARANTEE OF IMPROVEMENTS
INSTALLATION FOR THE KNOLL SUBDIVISION**

Deputy Zoning Administrator Mary Lynn Ray presented Council with a proposed agreement by and between Fairfield Communities, Inc. and the Town of Lake Lure regarding a guarantee of improvement installation for the Knoll Subdivision.

Commissioner Donovan moved, Seconded by Commissioner Schichtel, to approve the proposed agreement by and between Fairfield Communities, Inc. and the Town of Lake Lure regarding a guarantee of improvement installation for the Knoll Subdivision as presented. The vote of approval was unanimous. (Agreement attached)

**PARTICIPATION WITH NC HYDRO ELECTRIC
PRODUCER'S ASSOCIATION**

After much discussion, Commissioner Bush moved, seconded by Commissioner Schichtel, to table a request from the NC Hydro Electric Producers Association for funds to support legal council in a pending review initiated by Duke Power. The vote of approval was unanimous.

CONTRACTORS BIDS -- PAVILION/GAZEBO

Interim Town Manager Paul Wilson announced that he had received a bid from Carlson Farmer for a handicap ramp and steps around the Pavilion/Gazebo.

Finance Director Sam Karr reported that \$38,000 of Town funds and \$10,000 of Maria Wyatt Trust funds have been expended on the pavilion to date.

After much discussion, it was the consensus of Council to postpone any further development in the area around the pavilion until a specific requirement can be identified.

**CONTRACTORS BIDS -- DRAINAGE CULVERT FOR
NEW GOVERNMENT CENTER**

Commissioner Donovan moved, seconded by Commissioner Bush, to accept the bid from Dalton Brothers of \$16,180 to construct a drainage culvert for the new government center. The vote of approval was unanimous.

OTHER NEW BUSINESS

Commissioner Donovan moved, seconded by Commissioner Church, to deny Duke Power's request regarding a power line along the Lake Lure Golf Course property line adjoining Betty Justice's property. The vote of approval was unanimous.

STAFF REPORTS

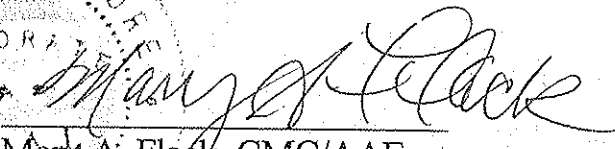
Mayor Lehner announced that Sgt. Gregory S. Johnson and Sgt. Kevin S. Harris of the Lake Lure Police Department have completed a three-day course of instruction titled Preliminary Investigations given by the North Carolina Justice Academy.

Mayor Lehner also announced that Mary Lynne Ray, Deputy Zoning Administrator, has passed the North Carolina Association of Zoning Officials (NCAZO) Certification Examination.

COUNCIL COMMENTS

With no further items of discussion, Commissioner Bush moved, seconded by Commissioner Church, to recess the regular meeting until Thursday, October 27, 1994, 2:00 p.m. at the Lake Lure Town Hall for the purpose of Closed Session (Interviewing candidate for Town Manager Position and to discuss the employment of a Fire Department Coordinator). The vote of approval was unanimous.

ATTEST:


Mary A. Flack, CMC/AAE
Town Clerk


Mayor Max E. Lehner