



Incorporated 1927

Town of Lake Lure

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MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, APRIL 23, 1996, 7:30 P.M. AT THE LAKE LURE MUNICIPAL CENTER

PRESENT: Mayor Max E. Lehner
Commissioner Bill Bush
Commissioner Carolyn Cobb
Commissioner Beth Rose
Commissioner Bud Schichtel

John R. Strutner, Town Manager
Sam Karr, Finance Director
Mary Lynne Hayes, Zoning Administrator
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.

AUDIENCE OF CITIZENS

No persons requested to speak under the Audience of Citizens.

APPROVAL OF MINUTES

Commissioner Bush moved, seconded by Commissioner Schichtel, to approve the minutes of the Tuesday, April 9, 1996 Regular Council meeting as written and presented by the Clerk. The vote of approval was unanimous.

OLD BUSINESS

a. Request from Planning and Zoning Board to Accept Proposal from Isothermal Planning and Development Commission

Zoning Administrator Mary Lynne Hayes presented to Council members proposals from the Isothermal Planning and Development Commission and the North Carolina Department of Commerce, Division of Community Assistance regarding assistance and technical expertise to the Planning and Zoning Board during the board's ongoing effort to revise the Town's Land Use Plan. (Proposals attached).

Commissioner Bush moved, seconded by Commissioner Schichtel, to accept the proposal submitted from the Isothermal Planning and Development Commission providing assistance and technical expertise for the Town of Lake Lure Land Development Plan Update at a cost not to exceed \$4,000. Commissioner Bush, Commissioner Schichtel, and Commissioner Cobb voted yes. Commissioner Rose voted no. Therefore, the motion passed with a vote of 3 to 1.

OLD BUSINESS

**b. Board Appointments -- Lake Lure Board of Adjustment/
Lake Structures Appeals Board**

Mayor Lehner presented a ballot to Council members listing nominees available for appointments to fill two regular positions open to replace John Bittle (term expiring 1996) and Berkely Young (term expiring 1997) who have resigned. Mayor Lehner also invited Council members to nominate additional persons.

Commissioner Rose moved, seconded by Commissioner Cobb, to do the following:

1. Appoint Jack Donovan and Mary Ann Dotson automatically to the Lake Lure Board of Adjustment/Lake Structures Appeals Board since they currently serve as alternates.
2. Request more time to interview the rest of the candidates for the opening position as alternate and vote for an alternate at a later date.

Commissioner Bush, Commissioner Schichtel, and Commissioner Cobb voted no. Commissioner Rose voted yes. Therefore, the motion did not pass with a vote of 3 to 1.

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Town Council voted by ballots on the following nominees to the Lake Lure Board of Adjustment/Lake Structures Appeals Board:

- | | | | |
|----|--|----|---------------------------|
| 1. | Fred Boehmer | 5. | Riley Hardy |
| 2. | Jack Donovan (currently an alternate) | 6. | Tom Hough |
| 3. | Mary Ann Dotson (currently an alternate) | 7. | Ken West (alternate only) |
| 4. | Priscilla Doyle | 8. | Nancy McNary |

Town Manager Strutner announced the following results after counting the ballots:

APPOINTMENTS:

- | | | | |
|----|-----------------|---------|-------------|
| 1. | Jack Donovan | 3 votes | Term - 1997 |
| 2. | Priscilla Doyle | 3 votes | Term - 1996 |
| 3. | Tom Hough | 1 vote | Term - 1996 |
| 4. | Mary Ann Dotson | 1 vote | Term - 1996 |

ALTERNATES:

- | | | | |
|----|-------------|---------|-------------|
| 1. | Tom Hough | 2 votes | Term - 1997 |
| 2. | Riley Hardy | 2 votes | Term - 1997 |

The results of the voting showed Jack Donovan (term expiring 1997) and Priscilla Doyle (term expiring 1996) as regular members and a tie between Tom Hough and Riley Hardy for one alternate position. In order to break the tie, Mayor Lehner voted to appoint Riley Hardy to the alternate position (term expiring 1997).

OLD BUSINESS

c. Other Old Business

Attorney Callahan recommended that Town Council clarify that the Ordinance No. 96-4-9 which was adopted on April 9, 1996 would not adopt and incorporate the state criminal statute with its provisions, and let the Lake Lure Police enforce the G.S. 14-399.

Commissioner Bush moved, seconded by Commissioner Cobb, to adopt Ordinance No: 96-4-9 (An Ordinance Amending Chapter 82 of the Code of Ordinances of the Town of Lake Lure) as written by the Town Attorney without any additional amendment to include the wording of General Statutes 14-399, entitled Littering. The vote of approval was unanimous. The ordinance reads as follows:

ORDINANCE NO: 96-4-9

**AN ORDINANCE AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES
OF THE TOWN OF LAKE LURE**

WHEREAS General Statutes 14-399, entitled Littering, prohibits littering throughout the State of North Carolina and promotes stronger punishment for each violation of said statute than provided for violations of Municipal Ordinance 82.01 and 82.02 of the Town littering statutes.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Lake Lure, State of North Carolina:

Section 1:

- A. Chapter 82; Littering, is amended by deleting and repealing 82.01 Littering Prohibited, and 82.02 Littering from Vehicles from said ordinance.
- B. The remainder of Chapter 82; Littering, shall remain in full force and effect.

Section 2: That this ordinance shall take effect and be in force from and after its date of passage.

Passed this 9th day of April, 1996.

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

TOWN OF LAKE LURE

MAYOR

NEW BUSINESS

a. Request for Right of Way

Town Attorney Callahan presented Council members with a letter of March 29, 1996, from R. Jay Foster, Attorney at Law, requesting a right-of-way on Town owned property by Mr. Norman Nelon. Mr. Nelon has indicated that he would be willing to pay the Town of Lake Lure a small consideration in the event it would consent to a right-of-way twenty (20') to thirty (30') feet in width. (This letter is attached hereto in order to create a permanent record).

Town Attorney Callahan read aloud Town Council minutes of June 22, 1993, reviewing Town Council's decisions to the same request made by Jewell Cole, a tenant in common, as reflected in the minutes. Mr. Callahan explained that in 1993 Council felt that if the permanent easement is allowed, this would bisect the middle of the Town-owned property with undesirable effects if plans were ever made to develop the property.

Commissioner Bush moved, seconded by Commissioner Rose, to deny the request for right-of-way (plat in the name of "Jewell Cole" numbered 2074B as referenced in letter of March 29, 1996) across the property belonging to the Town of Lake Lure. Commissioner Bush, Commissioner Schichtel, and Commissioner Rose voted yes to deny the request. Commissioner Cobb voted no. Therefore, the motion passed with a vote of 3 to 1.

NEW BUSINESS

b. Request Permission to hold a Truck Show on Town-Owned Property

Town Manager Strutner announced a request from Stanley Long with the Trucker's Association asking for permission to hold their 12th Annual "Run to the Rock" truck show on September 20, 21, and 22 at the Lake Lure Community Center as they have in previous years.

Commissioner Cobb moved, seconded by Commissioner Schichtel, to accept the letter of April 9, 1996, from Stanley Long requesting the following:

1. Provide them permission to use the public facilities at the community center for up to three days (September 20, 21, and 22) at the normal rate of rental.
2. Suspend the ordinance titled, Ordinance Governing Consumption of Malt Beverages, Unfortified Wine, Fortified Wine, Spirituous Liquor, or Mixed Beverages on Certain Public Places; Penalty, on Friday, September 20, 1996 from 5:00 p.m. until 12:00 midnight for the sole purpose of the F-100 Truck Show.

- 3. Charge a \$100 refundable security/clean-up deposit. A refund will be made only if the community center is left in normal condition.**
- 4. Mayor present the trophy for "Mayor's Choice" on Saturday night at 6:00 p.m.**
- 5. Permission to park on the grass as in previous year.**

The vote of approval was unanimous.

Town Manager Strutner agreed to notify Stanley Long regarding the point of "wash area" for the trucks.

NEW BUSINESS

c. Discussion Regarding April 9th Decision of Lake Structures Appeals Board on Lake Lure Village Resort Cluster Mooring Request

Commissioner Cobb presented this item stating this decision gave permission to extend said cluster mooring from its already extended 72' to an additional 18' totaling 90', violating further the ordinance restriction of 30'.

After lengthy discussion on various opinions and suggestions; Council requested the Town Attorney to draft some options for the Town to consider in structuring an appeal process and submit these within approximate two weeks.

Council further requested that the Lake Advisory have input inasmuch as the ordinance must be better defined to preclude a recurrence of this nature.

NEW BUSINESS

d. Other New Business

Bob Washburn, a member of the Lake Lure ABC Board, announced the completion of the refurbishment of the expanded ABC store, and acknowledged the significant help of Paul Wilson in supervising the remodeling effort. Mr. Washburn also announced that the costs of remodeling were considerably less than anticipated and consequently the Lake Lure ABC Board will be able to present a check of \$10,000 to the Town.

STAFF REPORTS

Town Manager Strutner reported that Council members received a memorandum from the Lake Advisory Committee with recommendations about posting "danger shallow" signs and buoys in the main channel at the mouth of the Broad River. Mr. Strutner stated that the Wild Life Commission has already moved some of these buoys.

Town Manager Strutner and Town Attorney Callahan discussed the legal views in regards to the Lake Advisory Committees request regarding closing at night the public Town ramp located at the Town's Marina.

Mr. Strutner also reported that he had submitted a proposal to the North Carolina Wild Life Commission requesting that they add "no wake" speed after dark at anytime or anywhere on the lake to the list of regulations to be enforced on Lake Lure. He had received a letter since then, stating that they will not add this to the list of state regulations to be enforced on Lake Lure by North Carolina Wild Life Officers. This was done at the direction of Town Council which had received this recommendation from Lake Advisory Committee.

Finance Director Karr reported that the Town's major expense for the month of March was \$36,151.23 to Choice Computer Center for computers. The Town's major revenue for the month was \$11,685.75 from Utilities Franchise Tax.

COUNCIL COMMENTS

Commissioner Schichtel suggested that Council consider other alternatives of displaying the Town's logo, as well as, the quilted wall hanging for the Town of Lake Lure meeting room.

CLOSED SESSION

CONFIDENTIAL MATTERS (G.S. 143-318.11) AND ATTORNEY/CLIENT MATTERS

Commissioner Bush moved, seconded by Commissioner Rose, to enter into closed session at approximately 9:05 p.m. for the purpose of discussing confidential information (G.S. 143-318.11) and legal matters with Town Attorney Callahan. The vote of approval was unanimous.

After discussion within closed session, Commissioner Bush moved, seconded by Commissioner Schichtel, to come out of the closed session and re-enter the regular session of the meeting. The vote of approval was unanimous.

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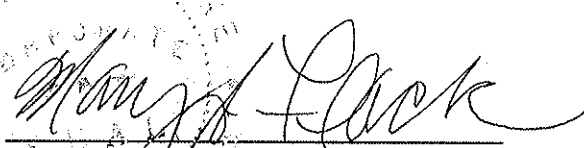
Commissioner Cobb moved, seconded by Commssioner Schichtel, to hire John C. Cloniger, Attorney at Law, as co-counsel with Town Attorney Callahan for litigation matters. The vote of approval was unanimous.

Commissioner Bush moved, seconded by Commissioner Rose, to unseal the closed session minutes of February 27, 1996. The vote of approval was unanimous.

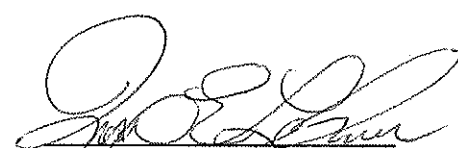
ADJOURNMENT

With no further items of discussion, Commissioner Cobb moved, seconded by Commissioner Bush, to adjourn the meeting. The vote of approval was unanimous.

ATTEST:



Mary A. Fleck, CMC/AAE
Town Clerk



Mayor Max E. Lehner

14-399. Littering.

VIEW THIS SECTION ONLY

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except

- (1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or
- (2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for the first offense. Any second or subsequent offense is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court may order the violator to:

- (1) Remove, or render harmless, the litter that he discarded in violation of this section;
- (2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or
- (3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars (\$200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

- (1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not

include a parachute or any other device used primarily as safety equipment.

- (2) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.
- (3) "Law enforcement officer" means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriffs department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128 (9);
- (4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. "Litter" does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.
- (5) "Vehicle" has the same meaning as in G.S. 20-4.01 (49); and
- (6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management.

(1935, c. 457; 1937, c. 446; 1943, c. 543; 1951, c. 975, s. 1; 1953, cc. 387, 1011; 1955, c. 437; 1957, cc. 73, 175; 1959, c. 1173; 1971, c. 165; 1973, c. 877; 1977, c. 887, s. 1; 1979, c. 1065, s. 1; 1983, c. 890; 1987, cc. 208, 757; 1989, c. 784, ss. 7.1, 8; 1991, c. 609, s. 1; c. 720, s. 49; c. 725, s. 1; 1993, c. 539, ss. 266, 267, 1241; 1994, Ex. Sess., c. 24, s. 14(c).)