



Incorporated 1927

Town of Lake Lure

P. O. Box 255 • Lake Lure, NC 28746-0255 • 828/625-9983 • FAX 828/625-8371

MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, SEPTEMBER 11, 2001, 7:00 P.M. AT THE LAKE LURE MUNICIPAL CENTER

PRESENT: Mayor Jim Proctor
Commissioner Blaine Cox
Commissioner Dick McCallum
Commissioner George Pressley
Commissioner Jack Stanier

H. M. Place III, Town Manager
J. Christopher Callahan, Town Attorney

ABSENT: N/A

CALL TO ORDER

Mayor Proctor called the meeting to order at 7:00 p.m. Mayor Proctor proclaimed September 12, 2001 as a day to mourn and pray for the families and victims who were attacked by terrorists on September 11, 2001.

INVOCATION

Attorney Callahan gave the invocation.

APPROVE AGENDA

A motion was made by Commissioner Cox to approve the agenda as amended adding an item on the consent agenda to consider a request from the Parks and Recreation Board. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

PUBLIC FORUM

Mayor Proctor invited the audience to speak on any non-agenda item. No one asked to speak.

CONSENT AGENDA

Mayor Proctor presented the consent agenda and asked if any items should be removed before calling for action. A motion was made by Commissioner McCallum to approve the following

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consent agenda items as presented and Commissioner Stanier seconded the motion. Therefore, the consent agenda, incorporating the following items were unanimously approved:

- a. approved minutes of August 14, 2001 (regular meeting), and August 28, 2001 (special meeting); and
- b. approved a budget amendment to increase the police department budget \$7,500 (#105100.5500 - vehicles) and increase state revenues by \$7,500 (#103370.0445 - police vehicle grant) as submitted by the finance director (copy of memo attached); and
- c. approved a request from the Parks and Recreation Board to suspend the peddling ordinance in order that vendors may sell concessions during concert events being held at the pavilion on Memorial Point every Sunday in September 2001.

End of Consent Agenda

NEW BUSINESS

- a. **Adopt Ordinance No. 01-09-11A Establishing a Moratorium on the Review and Approval of New Major and Minor Subdivisions within the Town of Lake Lure**

Attorney Callahan gave a brief overview of the proposed Ordinance No. 01-09-11A establishing a moratorium on the review and approval of new major and minor subdivisions within the Town of Lake Lure.

David Odom, a civil engineer, expressed his concerns of the economic and financial impact this proposed moratorium will have on his business and others if approved.

After discussion, a motion was made by Commissioner Cox to adopt Ordinance No. 01-09-11A as presented by Attorney Callahan. Commissioner Stanier seconded the motion and the vote of approval was unanimous.

ORDINANCE NO. 01-09-11A

AN ORDINANCE TO ESTABLISH MORATORIUM FOR CONSTRUCTION AND DEVELOPMENT OF NEW MAJOR AND MINOR SUBDIVISIONS WITHIN THE TOWN OF LAKE LURE

WHEREAS, the Planning and Zoning Board, in conjunction with the Town Council of Lake Lure, meeting in Special Workshop Meeting on August 28, 2001, have discussed the need to establish a moratorium for construction and development of New Major and Minor Subdivisions within the city limits of the Town of Lake Lure, and whereas as a result of said discussions and debate, the Town Council, unanimously approved the following ordinance:

WHEREAS the 2000 US Census has shown unprecedented growth within the city limits of Lake Lure, and

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WHEREAS residential construction within the city limits appear to be continuing unabated and at an even greater acceleration; and

WHEREAS the Town Council is concerned about the Town's ability to provide services for such growth, and that even highways and traffic control may need considerations and modifications to meet the needs caused by such growth; and

WHEREAS the density of boats and usage of the lake itself also need to be studied to see how this growth rate will impact the future use of the lake;

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE AS FOLLOWS:

1. The Town Council hereby initiates and declares a temporary moratorium on any new major and minor subdivision development (as defined by Lake Lure's Subdivision Ordinance) within the city limits for a period of August 28th through October 9, 2001.
2. No preliminary subdivision plats or minor subdivisions will be received, reviewed or approved during this temporary moratorium.
3. This temporary moratorium shall not apply to any preliminary subdivision plats received and approved by the Town of Lake Lure prior to August 28th, 2001 and any preliminary plats approved by the Town prior to August 28, 2001 the Developer may continue development.
4. All other requirements of the Town's subdivision and zoning ordinances shall remain in full force and effect.
5. The Town hereby calls for a public hearing at the October regular meeting of Town Council on October 9, 2001, at which time the Town may consider extending this moratorium for an additional 180 day period. The Town Clerk is hereby directed to publish Notice of Public Hearing for two consecutive weeks in The Daily Courier newspaper prior to said public hearing.

Read and approved this 11th day of September, 2001.

NEW BUSINESS

- b. Appoint Representatives to the North Carolina Municipal League 2001 Annual Business Meeting for a Voting Delegate and an Alternate Voting Delegate**

A motion was made by Commissioner Stanier to appoint Mayor Jim Proctor to serve as voting delegate and Town Manager H. M. Place III to serve as alternate voting delegate to represent the Town of Lake Lure at the North Carolina Municipal League 2001 annual business meeting. Commissioner Pressley seconded the motion and the vote of approval was unanimous.

STAFF REPORTS

Town Manager Place reported on the following:

1. The town staff listened and watched the tragic events in New York and Washington today with stunned disbelief just like the rest of the nation. We all join with the council and citizens of Lake Lure in a prayer for the victims, their families, the government and our country.
2. Mentioned that the town adopted two years ago an Emergency Operations Plan which includes the town's "State of Emergency" ordinance and a section on civil emergencies.
3. Lake Lure and the Village of Chimney Rock officials held a meeting today to discuss means of coordinating utilities systems.
4. Received one bid of \$5,385 from American Chimney Sweep and Paint Company of Bostic to refurbish the bridge railings and lakeside portion of the dam. Several firms were contacted by William Grimes.

After discussion, a motion was made by Commissioner McCallum to authorize an expenditure of \$5,385 to American Chimney Sweep and Paint Company for refurbishing the bridge railings and lakeside portion of the dam as recommended by Town Manager Place. Commissioner Cox seconded the motion and the vote of approval was unanimous.

5. Town engineers are talking with the contractor for the lift station project to resolve the unsatisfactory performance of the pumps.
6. Attorney Chris Callahan is preparing the documents to transfer title of the property on SR. 9 to Mr. Perez. The town will receive payment of \$160,000 as soon as the closing can be set up.
7. The pay and classification study continues. A draft report is expected later this month.
8. Recommends that the town notify the legislative delegation and storm the capital as did the Village of Chimney Rock should the town decide to apply for water systems grants the fourth time.

Public Hearing – Proposed Ordinance No. 01-09-11 Creating Chapter 96 (The Soil Erosion and Sedimentation Control Regulations) of the Code of Ordinances for the Town of Lake Lure Establishing Regulations to Control Accelerated Erosion and Sedimentation
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Public notices were duly given and published in the Forest City Daily Courier newspaper.

A motion was made by Commissioner Cox to open the public hearing regarding the proposed Ordinance No. 01-09-11 creating Chapter 96 (The Soil Erosion and Sedimentation Control

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Regulations) of the Code of Ordinances for the Town of Lake Lure establishing regulations to control accelerated erosion and sedimentation. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

Town Manager Place reviewed and answered questions pertaining to the proposed Ordinance No. 01-09-11.

Mayor Proctor invited citizens to speak during the public hearing. No one requested to speak.

A motion was made by Commissioner Cox to close the public hearing and enter the regular session of the meeting. Commissioner Pressley seconded the motion and the vote of approval was unanimous.

After discussion, Commissioner McCallum made a motion to adopt Ordinance No. 01-09-11 as amended. Commissioner Pressley seconded the motion and the vote of approval was unanimous.

ORDINANCE NO. 01-09-11

AN ORDINANCE CREATING CHAPTER 96 (THE SOIL EROSION AND SEDIMENTATION CONTROL REGULATIONS) OF THE CODE OF ORDINANCES FOR TOWN OF LAKE LURE ESTABLISHING REGULATIONS TO CONTROL ACCELERATED EROSION AND SEDIMENTATION IN ORDER TO PREVENT THE POLLUTION OF WATER AND OTHER DAMAGE TO LAKES, WATERCOURSES, AND OTHER PUBLIC AND PRIVATE PROPERTY BY SEDIMENTATION

WHEREAS, the town council has determined that the prevention of soil erosion and sedimentation is a primary goal of the town; and

WHEREAS, the North Carolina Department of Environment and Natural Resources implements and enforces the North Carolina Sedimentation Pollution Control Act of 1973 and requires an erosion and sedimentation control plan for all land disturbance in excess of one acre in area; and

WHEREAS, it is the intent of the town council to adopt regulations, including requirements for erosion and sedimentation control plans for land disturbance activities of less than one acre in area and to require a permit for all land disturbing activities;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH ALL COUNCILMEN VOTING IN THE AFFIRMATIVE:

SECTION ONE: The Lake Lure Code of Ordinances is hereby amended to add a new Chapter 96 under Title IX, Planning and Regulation of Development, as follows:

§ 96.01 TITLE.

This chapter may be cited as the Town of Lake Lure Soil Erosion and Sedimentation Control Regulation.

§ 96.02 PURPOSES.

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This chapter is adopted for the purposes of:

(A) Regulating certain land disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and

(B) Establishing procedures through which these purposes can be fulfilled.

§ 96.03 DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

“Accelerated Erosion.” Any increase over the rate of natural erosion as a result of land disturbing activity.

“Act.” The North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

“Affiliate.” A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

“Being Conducted.” A land disturbing activity has been initiated and permanent stabilization of the site has not been completed.

“Borrow.” Fill material which is required for on-site construction and is obtained from other locations.

“Buffer Zone.” The strip of land adjacent to a lake or natural watercourse.

“Commission.” The North Carolina Sedimentation Control Commission.

“Completion of Construction or Development.” The point at which no further land disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

“Erosion.” The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

“Ground Cover.” Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

“Natural Watercourse.” Any stream, river, brook, creek, run, branch, wetland, or waterway in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

“Land Disturbing Activity.” Any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance or other construction or maintenance activity, including chemical applications or other techniques, that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

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“Major Erosion Control Plan” An erosion and sedimentation control plan for land disturbance of one acre or more approved by the North Carolina Department of Environment and Natural Resources.

“Minor Erosion and Sedimentation Control Plan” An erosion and sedimentation control plan approved by the Town of Lake Lure.

“Parent.” An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

“Person.” Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

“Person Conducting Land Disturbing Activity.” Any person who may be held responsible for a violation unless expressly provided otherwise by this chapter or any order adopted pursuant to this chapter.

“Phase of Grading.” One of two types of grading, rough or fine.

“Plan.” An erosion and sedimentation control plan.

“Sediment.” Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

“Sedimentation.” The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land disturbing activity or into a lake or natural watercourse.

“Siltation.” Sediment resulting from accelerated erosion which is settle able or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land disturbing activity; and which has been deposited, or is in suspension in water.

“Storm Water Runoff.” The direct runoff of water resulting from precipitation in any form.

“Subsidiary.” An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

“Ten-Year Storm.” The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

“Tract.” All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

“Twenty-five Year Storm.” The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

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“Uncovered.” The removal of ground cover from, on, or above the soil surface.

“Undertaken.” The initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

“Velocity.” The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

“Waste.” Surplus materials resulting from on-site construction and disposed of at other locations.

“Working Days.” Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

§ 96.04 SCOPE AND EXCLUSIONS.

This chapter shall apply to all land disturbing activities, as defined, within the Town of Lake Lure except the following:

(A) activities undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Environment and Natural Resources. If land disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this chapter shall apply to such activity and any related land disturbing activity on the tract;

(B) activities for which a permit is required under the mining Act of 1971, Article 7 of Chapter 74 of the General Statutes;

(C) land disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a); and

(E) for the duration of an emergency, activities essential to protect human life.

(F) activities conducted for any public purpose by any agency of the federal or state government, Rutherford County or the Town of Lake Lure, provided that the Town hereby declares its intent that all departments, contractors and subcontractors shall comply with the standards set forth in this chapter.

§ 96.05 GENERAL REQUIREMENTS.

(A) Permit Required.

(1) A land disturbance permit approved by the Zoning Administrator shall be required for all non-exempt land disturbing activities, except that no permit shall be required for land disturbing activity:

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- (a) for the purpose of fighting fires; or
- (b) that does not exceed 100 square feet in surface area.

(2) Where a major erosion control plan approved by the North Carolina Department of Environment and Natural Resources is required, such plan approval shall be a prerequisite to receiving a permit from the town.

(B) Plans Required:

(1) A minor erosion and sedimentation control plan shall be prepared for all land disturbing activities subject to this chapter whenever more than 1000 square feet but less than one acre of land is to be uncovered. The plan shall be filed with, and accepted for review by, the Zoning Administrator ten or more working days prior to initiating the activity.

(2) Persons conducting land disturbing activities shall file two copies of the minor erosion control plan. Upon approval of the plan, one copy, signed by the Zoning Administrator, shall be returned to the applicant and shall be maintained at the job site. If the Zoning Administrator, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Zoning Administrator shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the Zoning Administrator.

(3) The Zoning Administrator will review the plan and within 10 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve, approve with modifications, approved with performance reservations, or disapprove a complete erosion and sedimentation control plan within 10 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. If, following commencement of a land disturbing activity pursuant to an approved plan, the Zoning Administrator determines that the plan is inadequate to meet the requirements of this chapter, the Zoning Administrator may require any revision of the plan that is necessary to comply with this chapter. The Zoning Administrator may establish an expiration date for erosion control plans approved under this chapter.

(4) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the Zoning Administrator on request.

(5) The Zoning Administrator may disapprove a minor erosion control plan upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

- (a) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the town or the North Carolina Sedimentation Control Commission pursuant to the Act and has not complied with the notice within the time specified in the notice;

- (b) Has failed to pay a civil penalty assessed pursuant to the Act or a local

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ordinance adopted pursuant to the Act by the time the payment is due.

(c) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act. For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.

(6) Applications for amendment of a minor erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Zoning Administrator, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(7) Any person engaged in land disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

(C) Protection of Property. Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

(D) More Restrictive Rules Shall Apply. Whenever conflicts exists between federal, state, or local laws, chapter, or rules, the more restrictive provision shall apply.

§ 96.06 OBJECTIVES.

It is the intent of this chapter that the following objectives shall be met in the planning, permitting and execution of all land disturbing activities:

(A) Identify Critical Areas - On-site areas which are subject to severe erosion, off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, and areas of environmental concern as designated by the Department of Environment and Natural Resources must be identified and receive special attention.

(B) Limit Time of Exposure - All land disturbing activity must be planned and conducted to limit exposure to the shortest feasible time.

(C) Limit Exposed Areas - All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(D) Control Surface Water - Surface water runoff originating upgrate of exposed areas must be controlled to reduce erosion and sediment loss during the period of exposure.

(E) Control Sedimentation - All land disturbing activity must be planned and conducted so as to prevent off-site sedimentation damage.

(F) Manage Storm Water Runoff - When the increase in the velocity of storm water runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans must include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

§96.07 STANDARDS FOR LAND DISTURBING ACTIVITY

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The following standards shall be met when undertaking any land disturbing activity:

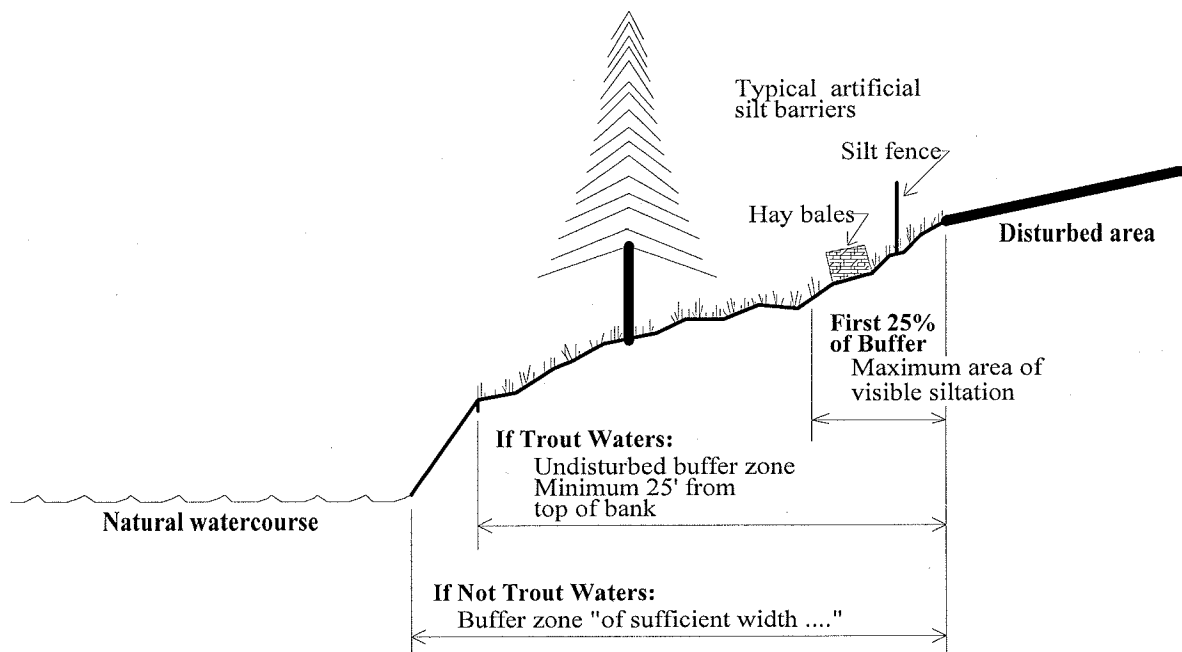
(A) Buffer Zone:

(1) Where any land disturbing activity is conducted in proximity to Lake Lure, Bald Mountain Lake or any natural watercourse, a buffer zone shall be provided along the margin of the shoreline or watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land disturbing activity, whichever is greater. Provided, however, that the Zoning Administrator may approve plans which include land disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(2) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area. The 25% of the strip nearer the land disturbing activity shall contain natural or artificial means of confining visible siltation.

(3) The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

(4) Where a temporary and minimal disturbance is permitted as an exception by § 96.07 (A) (1) above, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone.



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(5) No land disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards", in these waters.

(B) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 10 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

(C) Ground Cover. Whenever land disturbing activity is undertaken which uncovers more than 1000 square feet of land, the person conducting the land disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 15 working days or 30 calendar days following completion of construction or development whichever period is shorter.

§96.08 DESIGN AND PERFORMANCE STANDARDS.

Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

§96.09 BORROW AND WASTE AREAS.

When the person conducting the land disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department of Environment and Natural Resources's Division of Solid Waste Management shall be considered as part of the land disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land disturbing activity.

§96.10 ACCESS AND HAUL ROADS.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land disturbing activity shall be considered a part of such activity.

§96.11 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow

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characteristics, except when justification for significant alteration to flow characteristic is provided.

§96.12 RESPONSIBILITY FOR MAINTENANCE.

During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this chapter or any order adopted pursuant to this chapter. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

§96.13 ADDITIONAL MEASURES.

Whenever the Zoning Administrator determines that significant sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of protective practices, the person conducting the land disturbing activity will be required to and shall take additional protective action. The Zoning Administrator shall have the authority to suspend the land disturbance permit and any certificate of zoning compliance until such protective action is taken.

§96.14 EXISTING UNCOVERED AREAS.

(A) All uncovered areas existing on the effective date of this chapter which resulted from land disturbing activity, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(B) The Zoning Administrator will serve upon the landowner or other person in possession or control of the land a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the Zoning Administrator shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(C) The Town of Lake Lure reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

§ 96.15 APPEALS.

The appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

(A) The disapproval or modification of any proposed erosion control plan by the Zoning Administrator may be appealed to the Town Council if the person submitting the plan submits written request for such appeal within 15 days after receipt of written notice of disapproval or modifications.

(B) The appeal held pursuant to this section shall be heard by the Town Council within 30 days after the date of the appeal.

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- (C) The decision of the Town Council regarding any appeal of this chapter shall be final.

§ 96.16 INSPECTIONS AND INVESTIGATIONS.

(A) The Zoning Administrator or a designee will periodically inspect land disturbing activities to ensure compliance with this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan.

(B) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the town while that person is inspecting or attempting to inspect a land disturbing activity under this chapter.

(C) If it is determined that a person engaged in land disturbing activity has failed to comply with this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with this chapter, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with this chapter, or rules or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.

(D) The Zoning Administrator shall have the power to conduct such investigation as may reasonably be deemed necessary to carry out the duties prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activity.

§ 96.17 INJUNCTIVE RELIEF.

(A) Whenever the Town Council has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the Town of Lake Lure for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Rutherford County.

(B) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

§ 96.18 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY.

The Town Council may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution

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by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

§ 96.999 PENALTY.

(A) This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. §160A-175.

(B) Fines

(1) Failure to receive a land disturbance permit as required by this chapter for any form of land disturbance prior to commencement of said land disturbance shall subject both the owner of the property and any contractor engaged for the purpose of performing the work to a fine not to exceed \$500, except as provided in paragraph (3) below. If the illegal land disturbance meets all requirements of this chapter, a permit shall be issued upon payment of the fine and submittal of a completed application, including erosion control plan, if required, and fee. If the illegal land disturbance does not meet said requirements, the disturbed property shall either be restored or be brought into compliance prior to receipt of the permit.

(2) Failure to comply with the provisions of a land disturbance permit and the representations submitted as part of the application for the permit, including any erosion control plan, shall be cause for the Zoning Administrator to place a stop order on the work for which the permit was issued until such time as the land disturbance is altered to comply or until a revised land disturbance permit is approved. If the land disturbance is not brought into conformance or a revised land disturbance permit meeting the standards of this chapter is not submitted within 30 days of the original notice of violation, the owner of the property and the contractor shall each be subject to a fine not to exceed \$500, except as provided in paragraph (3) below.

(3) Any property owner or contractor previously found to be in violation of this chapter who is found in violation again shall be considered a repeat offender and shall be subject to a fine not to exceed \$5000.

(C) Violation of any provision of this chapter shall subject the offender to a civil penalty which would be determined, assessed and recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within a reasonable period of time prescribed by an administrative officer of the town after such offender has been cited for such violation.

(D) Any provision of this chapter that makes unlawful a condition existing upon or use made of any property may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular. In addition to an injunction, the court may enter an order of abatement as a part of the judgement in the cause. An order of abatement may direct that the property shall be restored to its original condition prior to disturbance, or that any other action be taken that is necessary to bring the property into compliance with this policy or such ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, such defendant may be cited for contempt, and the town may execute the order of

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abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs to the town of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(E) Except as otherwise specifically provided, each day's continuing violation of any provision of this ordinance shall be a separate and distinct offense.

SECTION TWO: This ordinance shall be effective upon its adoption.

Adopted this 11th day of September, 2001.

COUNCIL COMMENTS

Commissioner Pressley gave a brief report on the Lake Advisory Committee activities and recommendations.

Commissioner Cox reported on the activities of the Lake Lure Municipal Golf Course. He said the Golf Course Committee is short two members.

Commissioner McCallum encouraged everyone to donate blood to the nearest Red Cross.

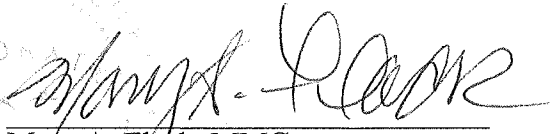
A motion was made by Commissioner Pressley to appoint Commissioner Jack Stanier to serve as representative for the Town of Lake Lure on the Isothermal Planning and Development Commission effective December 2001. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

Mayor Proctor announced in honor of the 75th anniversary of the completion of the dam there will be an informal gathering of boats at the Lake Lure dam on September 20, at 7:00 p.m. to sing happy birthday. He said everyone is invited to attend.

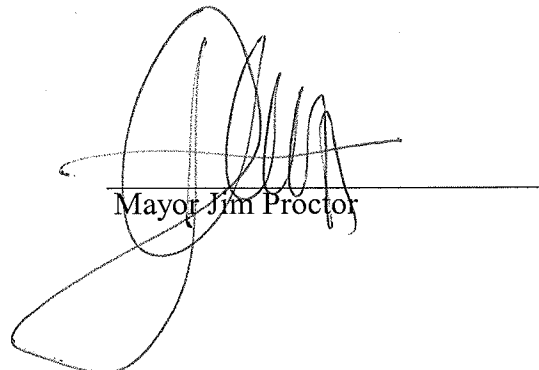
ADJOURNMENT

With no further items of discussion, Commissioner Cox made a motion to adjourn the meeting at 8:20 p.m. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

ATTEST:



Mary A. Flack, MMC
Town Clerk



Mayor Jim Proctor