

**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL
HELD TUESDAY, NOVEMBER 18, 2008, 7:00 P.M. AT THE LAKE LURE MUNICIPAL
CENTER**

PRESENT: Mayor Pro Tem Russ Pitts
Commissioner Wayne Hyatt
Commissioner Jeanine Noble
Commissioner Linda Turner

Steve Wheeler, Town Manager
J. Christopher Callahan, Town Attorney

ABSENT: Mayor Jim Proctor

CALL TO ORDER

Mayor Pro Tem Pitts called the meeting to order at 7:00 p.m.

INVOCATION

Attorney Callahan gave the invocation.

APPROVE THE AGENDA

After discussion, Commissioner Noble made a motion to approve the agenda as amended. Add an item as 9d on the consent agenda to authorize the Mayor Pro Tem on behalf of Town Council to inform the Zoning and Planning Board about a clerical correction as outlined by Mayor Pro Tem with regards to a memorandum from the Mayor dated October 20, 2008 pertaining to a directive regarding utility easements. Commissioner Turner seconded the motion and the vote of approval was unanimous.

Public Hearing - Consider Proposed Ordinance No. 08-11-18 Amending the Town of Lake Lure Subdivision Regulations, Title IX, Chapter 91 and the Zoning Regulations, Title IX, Chapter 92, Pertaining to Mountain and Hillside Development

Community Development Director Shannon Baldwin gave a brief overview and answered questions pertaining to proposed Ordinance No. 08-11-18 amending the Town of Lake Lure Subdivision Regulations, Title IX, Chapter 91 and the Zoning Regulations, Title IX, Chapter 92, pertaining to mountain and hillside development. Mr. Baldwin read into the record his memorandum

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dated November 12, 2008 pertaining to the mountain and hillside development ordinance. (Attached is a copy of the memorandum from Shannon Baldwin dated November 12, 2008.) Mr. Baldwin read into the record a memorandum dated November 12, 2008 from Community Development Technician Sheila Spicer regarding the public hearing notices. (Attached is a copy of the memorandum from Sheila Spicer dated November 12, 2008.) Community Development Attorney Michael Egan read into the record his summary of the August 27, 2008 draft of the Town of Lake Lure mountain and hillside development ordinance and he answered questions pertaining to this ordinance. (Attached is a copy of the summary from Michael Egan.)

Mayor Pro Tem Pitts opened the public hearing regarding proposed Ordinance No. 08-11-18 and invited citizens to speak during the public hearing. Todd Dunnick with Mountain Land Properties and representing Michael Shaheen owner of lot 103A and lot 105R in Deerfield in the Rumbling Bald Resort; John Bittle, a general contractor and representing Mr. and Mrs. Cooley who owns lot 13 on the Shumont Ridge; Josh Farmer, attorney of Rutherfordton and representing several clients who are land owners in Lake Lure; and Rob Manors, co-owner of two lots on Sugar Bush Point, conveyed their concerns to Council about the proposed ordinance.

Mayor Pro Tem Pitts read into the record an email from James Gillespie praising the ordinance. (Attached is a copy of the email from James Gillespie.)

After discussion, Commissioner Turner made a motion to close the public hearing. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

Adopt Ordinance 08-11-18 Amending the Town of Lake Lure Subdivision Regulations, Title IX, Chapter 91 and the Zoning Regulations, Title IX, Chapter 92, Pertaining to Mountain and Hillside Development
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Public notices were duly given and published in the Forest City Daily Courier newspaper.

After discussion, Commissioner Noble made a motion to adopt Ordinance No. 08-11-18, amending the Town of Lake Lure Subdivision Regulations, Title IX, Chapter 91 and the Zoning Regulations, Title IX, Chapter 92, pertaining to mountain and hillside development as revised. That this ordinance be consistent with the 2007-2017 comprehensive plan for the reasons set forth in the recommendation sent by the zoning and planning board. Also, direct the Zoning and Planning Board to study this ordinance further and consider public comments made during this hearing. Direct the Zoning and Planning Board to draft amendments including recommendations from Community Development Mike Egan and bring back to Town Council the proposed amendments no later than 60 days. Commissioner Turner seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 08-11-18

**AN ORDINANCE CONCERNING MOUNTAIN & HILLSIDE DEVELOPMENT;
AMENDING §91.06 OF THE SUBDIVISION REGULATIONS OF THE TOWN OF LAKE**

LURE CONCERNING THE DEFINITION OF "STEEP SLOPE"; AMENDING §91.55(B) THEREOF CONCERNING THE CREATION OF LOTS ON STEEP SLOPES; CREATING A NEW §92.041 OF THE ZONING REGULATIONS OF THE TOWN OF LAKE LURE ESTABLISHING MOUNTAIN RIDGE PROTECTION OVERLAY ZONES; CREATING A NEW ARTICLE 12 OF SUCH ZONING REGULATIONS ESTABLISHING STANDARDS FOR MOUNTAIN AND HILLSIDE DEVELOPMENT; AMENDING SECTION 92.005 THEREOF TO PROVIDE DEFINITIONS

WHEREAS, the mountains, hillsides and ridges of the Town of Lake Lure are characterized by steep slopes and thin, sensitive soils; and, because of the natural stresses placed on such environment, they require special protection; and

WHEREAS, land disturbing activities on the high elevations, hillsides, steep slopes and ridges of Lake Lure potentially threaten the public health, safety, welfare and economic progress of the Town; and

WHEREAS, such land disturbing activity may endanger the quality of surface water by increasing erosion and stream sedimentation; has the potential to induce landslides; has the potential to adversely affect groundwater due to difficulty in providing proper sewage disposal; and may damage the habitat of some species of wildlife (plants, animals, and insects); and

WHEREAS, the intent of this ordinance is to retain an overall appearance similar to that of the natural terrain, i.e., to limit extreme alteration of the terrain and blend approved alterations of topography into the natural shape of the land, to preserve the mountain tops, hillsides, slopes, banks, and ridge lines in as natural a state as possible by responsible development using innovative design principles, to encourage only minimal grading which relates to the natural contours of the land, to preserve and protect visually significant rock outcroppings, native plant materials, natural drainage patterns and water courses, and areas of visual significance, to encourage a variety of building types, padding techniques, grading techniques, site design, arrangement and spacing of buildings in developments, to encourage innovative architecture, landscaping, circulation and site design, and to discourage mass grading of large pads and excessive terracing; and

WHEREAS, the Town of Lake Lure Comprehensive Plan recognizes that the physical setting of the town, with its rural charm, spectacular views and natural resources, is a primary attraction for all of those who visit and live there and further contains objectives and policies minimizing negative impacts from grading on steep slopes.

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

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SECTION ONE. This ordinance shall be known and may be referred to as the Mountain & Hillside Development Ordinance.

SECTION TWO. Section 91.006 of the Subdivision Regulations of the Town of Lake Lure is hereby amended to delete the definition of *steep slope* contained therein and to add the following definition for *building and grading envelope*.

Building and grading envelope (BGE): The limits of disturbance affected by the establishment of a building and grounds. All buildings, walls, lawns, driveways, site amenities, and associated disturbance from construction activity shall be confined within this zone. The BGE may be sited in one mass or apportioned into several smaller compounds connected by walks or drives.

SECTION THREE. Section 91.55(B) of the Subdivision Regulations of the Town of Lake Lure, entitled "Steep Slopes", is hereby amended to read as follows:

(B) Steep Slopes

~~(1) To verify the average slope of the land being subdivided, and to accurately map any steep slopes and/or deep depressions occurring on that land, the subdivider shall obtain a professional survey as described below:~~

~~(a) The survey shall be computed in sufficient detail to produce a topographical map with contour lines at no greater than 5 foot intervals.~~

~~(b) The mapping will be produced to National Map Accuracy Standards as published by the USGS:~~

~~1. Horizontal.~~

~~90% of all visible planimetric features will be within 1/40th of an inch, based on the mapping scale, of their correct coordinate positions, and no such well defined features shall be in error by more than 1/20th of an inch, based on the mapping scale.~~

~~2. Vertical.~~

~~90% of all contours on clear unobscured ground will be correct to within 1/2 of the contour interval. The remaining 10% will not exceed in error by more than the contour interval.~~

~~90% of all spot elevations on clear unobscured ground will be correct to within twenty-five percent of the specified contour interval, and none will be in error by more than fifty percent of that contour interval.~~

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~~3. Obscured and Uncertifiable Areas:~~

Obscured areas and areas that can not be certified to the above accuracies, by an Aerial Mapping Firm, must be supplemented by field surveyed topo, produced by a NC Professional Land Surveyor, in critical design areas such as proposed roads, all proposed cut & fill areas, and any other areas deemed critical by the Town's development review committee.

~~(2) Extensive land clearing and construction of roadways on steep slopes is prohibited without the application of permanent slope stabilization and environmental protection measures suitable to the local topography, as detailed in Chapter 96, the Soil Erosion and Sedimentation Control Regulations, plus review and approval by a licensed geotechnical engineer.~~

~~(3) Where the construction of roadways on steep slopes is approved, the roadways shall be constructed along the contour of the land.~~

(4) Any development planned for steep slopes shall follow the aesthetic as well as the technical recommendations of the geotechnical engineer and/or the erosion control and/or tree protection officer(s) to minimize the impact of construction on the viewshed.

(1) No residential lot shall be created pursuant to this Chapter unless the average slope of such lot is less than 30% or, in the alternative, unless such lot contains a building and grading envelope with an average slope of less than 30%.

(2) The preliminary plat shall demonstrate compliance with this paragraph in the following manner:

(a) A note indicating the topographic survey confirms all lots in the proposed subdivision have average slopes of less than 30%; or

(b) A note, based on the topographic survey, identifying which lots have average slopes of 30% or greater and confirming that all other lots have average slopes of less than 30%.

(c) Lots with average slopes of 30% or greater shall have depicted thereon a building and grading envelope meeting the requirements of Article 12 of Chapter 92, Mountain & Hillside Development.

(3) No development activities shall take place outside the bounds of any such building and grading envelope except as authorized by Article 12 of Chapter 92, Mountain & Hillside Development.

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- (4) For the purpose of demonstrating compliance with this paragraph, the formula contained in §92.206(I) of the Zoning Regulations shall be used to determine slope.

[ADDITIONS TO TEXT ARE UNDERLINED; DELETIONS ARE ~~STRUCK THROUGH~~.]

SECTION FOUR. Section 92.005 of the Zoning Regulations of the Town of Lake Lure, entitled “Definitions”, is hereby amended to add the following definitions:

Building and grading envelope (BGE): The limits of disturbance affected by the establishment of a building and grounds. All buildings, walls, lawns, driveways, site amenities, septic fields, and associated disturbance from construction activity shall be confined within this zone. The BGE may be sited in one mass or apportioned into several smaller compounds connected by walks or drives.

Community Development Director. The person charged with administration of this chapter. Also, sometimes referred to herein as “Director”. Unless specified otherwise, the terms “Community Development Director” and “Director” include the designee thereof.

Excavation: A land-disturbing activity involving the mechanical removal of earth material.

Filling: A land-disturbing activity involving the placement of fill material, including the temporary stockpiling of fill material.

Fill material: A deposit of earth or other natural or man-made material placed by artificial means.

Grading: Any scraping, excavating or filling of the earth's surface or combination thereof.

Land-disturbing activity: Any grading of land, any clearing of vegetation, and any construction or rebuilding of a building or structure. This term shall not include activities such as ordinary maintenance and landscaping operations, individual home gardens, the upkeep of yard and grounds, repairs, and the cutting of firewood for personal use.

Natural ground surface: The ground surface in its original state before any land-disturbing activity.

Rock outcropping: The part of a rock formation that appears above the surface of the surrounding land.

Slope: An inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance. In this Ordinance, slopes are generally expressed as a percentage; percentage of slope refers to a given rise in elevation over a given run in distance. A fifty (50) percent slope, for example, refers to a 100-foot rise in elevation over

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a distance of 200 feet. A fifty (50) percent slope is expressed in engineering terms as a 2:1 slope.

Undisturbed: The natural ground surface remains in its natural state; no land disturbing activity occurs; no vegetation is removed except as exempted by this Ordinance; and no impervious surface is constructed thereon.

SECTION FIVE. Article 12 of the Zoning Regulations of the Town of Lake Lure, entitled “Mountain and Hillside Development”, is hereby created to read as set forth herein.

12 MOUNTAIN AND HILLSIDE DEVELOPMENT

§ 92.200 Applicability.

The regulations contained in this Article apply to mountain and hillside development which is any lot, tract or parcel of land for which the average slope, as defined herein, equals or exceeds 30 percent. Applicability shall initially be determined by means of the Town’s GIS maps. Property owners may provide topographic maps of the property if they disagree with the determination made by reference to the GIS maps.

§ 92.201 Goals.

This Ordinance is adopted in order to further the following goals:

- (1) To preserve the appearance and protect the natural resources of Lake Lure’s mountains and hillsides;
- (2) To protect ridgelines and steep slopes;
- (3) To prevent soil erosion, and to control storm water runoff;
- (4) To protect trees and other native vegetation;
- (5) To encourage responsible development and to allow for reasonable uses that complement the natural and visual character of the natural landscape;
- (6) To encourage the application of sound and innovative design principles to development of these areas; and
- (7) To provide standards and guidelines for building and subdivision designs so they will be compatible with mountain and hillside surroundings in a way that benefits the landowner and the community.

§ 92.202 Lots of Record. Any existing lots, tracts or parcels of record as of the effective date of this Ordinance shall be considered without exception to be approved for the building of a single-family dwelling; provided, however, that all requirements for the Health Department are met and any required development permit or building permit is obtained. Provided, further, for any building requiring a Level 2 analysis, as per §92.205(B), the applicant shall provide a geotechnical analysis and report demonstrating the site is suitable and safe for construction of the proposed dwelling. Any new structures also must meet all applicable building codes and those development standards that may be set by other regulations, as may be required.

§ 92.203 Exemptions. The following land uses or activities are exempt from the requirements of this Section.

- (A) Agriculture and forestry, provided that such activities are consistent with the best management practices established by the North Carolina Division of Forest Resources or the North Carolina Natural Resources Conservation Service, consistent with all state and federal laws, and all applicable regulations promulgated by the State of North Carolina.
- (B) Landscape maintenance activities including the removal of diseased, dead or damaged trees, provided, however that such activities shall be carried out in conformance with applicable regulations of this resolution or other resolutions that might apply.
- (C) Any land-disturbing activity on any land which was contained in or subject to any site-specific development plan granted a statutory vested right.
- (D) Additions to single family residences, on legal lots of record, properly permitted and approved prior to the effective date of this resolution, shall be permitted, subject to the following:
 - (1) The addition complies with the requirements of Section 92.207 herein.
 - (2) The height of the building addition does not exceed the height of the existing building or the maximum height permitted pursuant to the regulations contained herein, whichever is greater.
 - (3) No land disturbance is required to accomplish the building addition that would encroach on any reserved area, or that exceeds the land disturbance maximum specified herein.

- (4) The building addition is in conformity with the purposes and intent and consistent with regulations of this Ordinance as determined by the community development director or designee.
- (E) Development of subdivisions for which preliminary or final plat approval has been granted prior to the effective date of this ordinance. The building of homes and other structures on such lots shall comply with applicable provisions contained herein.

§ 92.204 Application Requirements for All Land-Disturbing Activity Other Than That Associated With a Single-Family Dwelling. The following information shall be submitted as part of the first request for development authorization including, without limitation, approval of a preliminary subdivision plat, permit for land-disturbing activity, development plan approval, or permit for a building, road, or driveway for anything other than a single-family dwelling. In order to reduce costs to applicants, the topographic survey, soils report, hydrological report and plan, and geotechnical analysis and report need not address areas not proposed for development. Surveys, reports, plans and analyses required herein shall in all cases be prepared by a qualified licensed professional.

- (A) *Topographic survey.* A topographic survey of the project site shall be required for preliminary subdivision plat approval. Notes and details of existing terrain shall be included in the required topographic information, as needed to adequately portray the natural and man-made features of the land, as well as its elevations. A topographic survey may be required by the community development director for any other application for land-disturbing activity or building approval where reliable data on existing topography including county GIS maps or other topographic maps which may be available do not provide sufficient detail to administer the requirements of this Ordinance. Said topographic survey, if required by this section or by the community development director pursuant to this section, shall provide contour intervals of no more than five feet unless otherwise approved by the community development director.
- (B) *Certification of Maximum Structure Height.* Plans submitted with an application for a certificate of zoning compliance shall contain a certification that the maximum height of any proposed structure complies with the height restrictions contained in these Regulations.
- (C) *Soils report.* This report shall include conclusions and recommendations regarding the effect of soil conditions on the proposed development. The report may use the soil survey prepared and published by the Natural Resources Conservation Service for Rutherford County, North Carolina, as its basis, although site-specific soil tests may be required at the discretion of the community development director.

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- (D) ***Hydrology report and plan.*** This report shall include a complete description of the hydrology of the site, including the presence and location of springs, seeps and streams and the classification of streams as perennial, intermittent or ephemeral. The report shall also include conclusions and recommendations regarding the effect of hydrological conditions on the proposed development, and the capability of the site to be developed. A hydrological control plan shall also be required. At minimum said plan shall show and take into account the direction of flow within the local drainage basin; all natural drainage channels directed toward and away from the site within fifty feet of the perimeter of the site, and other natural drainage ways which may affect or be affected by the development proposal. Alterations of natural drainage ways shall be prohibited except for approved road crossings and drainage structures. Natural drainage ways shall be rip-rapped or otherwise stabilized below drainage and culvert discharge points for a distance sufficient to convey the discharge without channel erosion. Special notations shall be included which highlight details of the terrain, existing natural surface drainage and areas subject to seepage or spring flow.

- (E) ***Geotechnical Analysis and Report.*** This analysis and report shall address the existing geology, topographic and hydrologic conditions of the site, including an evaluation of the ability of the site to accommodate the proposed activity. Such analysis and report shall contain a professional opinion regarding slope stability, soil-bearing capacity, the potential for landslide or other geological hazards and their potential impact on structures or surrounding properties, and any other pertinent information. The geotechnical report and analysis shall also contain recommendations regarding foundation design, cut or fill slope design, soil-bearing potential, and building restrictions or setbacks, such as a re necessary to satisfy the intent of this ordinance and to protect the public health, safety and welfare. Upon completion of all improvements shown on approved plans but prior to the issuance of any final approval of improvements by the Town, the applicant shall submit a declaration by the geotechnical engineer or engineering geologist that all work was done in substantial accordance with the recommendations contained in the geotechnical analysis and report as approved and in accordance with approved plans.

- (F) ***Assessment.*** A written assessment of how the project has been designed to minimize the negative impacts of development on the environment of the mountain or hill.

§ 92.205 Application Requirements for Land-Disturbing Activity Associated With a Single-Family Dwelling. A plot plan of the lot or site on which the building is to be located shall be submitted to the building inspector for review and approval by the community development director. The plot plan shall be prepared by a registered surveyor, professional civil engineer, or other qualified licensed professional approved by the community development director and shall show the finished floor elevation of the building in relation to the natural ground surface and in relation to the uppermost point of the crest, summit, or ridge top of the mountain or hill on which said building is constructed. The plot plan shall also indicate the limits of the area to be disturbed and the slope of the building and grading envelope and of any proposed driveways. Areas proposed or required to remain undisturbed shall be marked on the plot plan and in the field with tape, orange plastic fencing, or other approved marker until a certificate of occupancy is issued or as otherwise approved by the community development director. The following additional information shall be submitted along with the plot plan.

- (A) **Level 1 Requirements.** Every application for authorization to undertake land-disturbing activities associated with development of a single-family dwelling shall contain a topographic survey of the lot with contour intervals of two feet and a certification of maximum structure height as per §92.204(B). The applicant shall also conduct an analysis of the Rutherford County soils map. If the soils map indicates the presence of problematic soils, a soils report meeting the requirements of §92.204(C) should accompany the application.
- (B) **Level 2 Requirements.** Level 2 requirements apply to any application to develop a single-family home where (1) the soils report confirms the presence of problematic soil types, and/or (2) the natural slope of the building and grading envelope equals or exceeds 40%. In addition to the topographic survey and certification of maximum building height required in §§92.204(A) and 92.204(B), Level 2 applications shall also contain the following information:
 - (1) A soils report meeting the requirements of Section §92.204(C), if one has not already been provided;
 - (2) A hydrology report and plan meeting the requirements of §92.204(D), above; and
 - (3) A geotechnical analysis and report meeting the requirements of §92.204(E), above.

§ 92.206 General Regulations for All Land-Disturbing Activity. The following minimum standards shall apply to earth moving and land-disturbing activity which is not otherwise exempt.

- (A) **Minimum Alterations.** Earth moving shall be limited to the minimum required for building foundations, driveways, drainage control structures and other

approved improvements and immediate areas surrounding the building, structure, road driveway, drainage structure or other approved improvements. With the exception of approved stockpiling or restoration efforts, substantial earth moving beyond that required for the installation or construction of approved buildings, structures, driveways, roads, or drainage structures shall not be permitted.

- (B) ***Cut and Fill.*** Unless otherwise specifically approved by the Town, cut slopes shall be no steeper than one-and-one-half horizontal to one vertical (1½:1) and fill slopes shall not be steeper than two horizontal to one vertical (2:1). Slopes exceeding 35 feet in height shall be benched at 35-foot intervals.
- (C) ***Compaction of Fill.*** All fill shall be stabilized in conformance with generally accepted engineering standards, including a compacted density of a least ninety-five percent (95%). Vegetation which has been cut or cleared shall be removed from the site and shall not be covered by, or imbedded in, fill material.
- (D) ***Timing of Disturbance and Prompt Completion.*** The applicant for any land-disturbing activity regulated hereunder shall propose a construction program to regulate the timing of construction which shall be designed to accomplish all earth moving and land disturbance in the shortest practical period of time. Absent extenuating circumstances beyond the control of the developer, failure to comply with the construction program shall constitute a violation of this ordinance
- (E) ***Natural Drainage Channels.*** Natural drainage ways shall be preserved to the maximum extent possible.
- (F) ***Impact on Adjacent Property.*** Realignment of streams and natural drainage channels shall not be permitted except for the purpose of effecting a stream crossing and only as specifically approved by the community development director upon issuance of all necessary state and federal permits. In such cases, natural or typical flow of surface or subsurface water shall not be altered or obstructed in any way by grade changes if such alteration may adversely affect the property of another by either contributing to pooling or collection of waters, or to the concentration or intensification of surface water discharge.
- (G) ***Density Limits.*** Unless developed as a planned unit development pursuant to the provisions of Paragraph (H), below, development on lands that are subject to this Ordinance shall meet the density and development requirements shown in Table 1, below. No lot that is subject to the requirements of this Ordinance shall be approved for subdivision unless it complies with the requirements of this table.

TABLE 1

Average Natural Slope of Lot To Be Subdivided	Minimum Lot Size (acres)	Maximum Building & Grading Envelope (BGE)
30--34%	1	25%
35--39%	2	20%
40% or more	5	15%

NOTE:

Minimum lot size may also be expressed in terms of dwelling units per acre. Thus, a two-acre minimum lot size would result in a maximum density of one dwelling per two acres (or one-half dwelling per acre) and so forth. This table shall not be construed to impair the clustering of dwellings and lots so long as maximum density is not exceeded.

- (H) ***Planned Unit Development Alternative.*** In lieu of developing land subject to the density limits contained in paragraph (G), above, the owner of such land may propose to develop it as a planned unit development in accordance with the procedures contained in Article 4 of this Chapter. The Board of Adjustment shall approve such application so long as the applicant demonstrates that the proposed planned unit development complies with applicable standards and requirements contained in Article 4, as well as the following additional standards:

- (1) The average natural slope of the building and grading envelope for each lot proposed for development shall be less than 30 percent.
- (2) With the exception of §92.206(G) concerning density limits, the proposed development shall comply with the requirements of this Chapter.

- (I) ***Determining Slope.*** Average slope shall be determined for each separate land tract in accordance with the methods and procedures contained herein. All slope determinations for the purposes of administering the Mountain & Hillside Development Ordinance shall be the natural slope of the lot to be developed or subdivided, which is to say the slope of the lot prior to any modification due to development activities.

- (1) Prior to commencing any development or land disturbing activity and prior to making application for any permits and/or other approvals, the calculated average slope for a particular land tract shall be approved by the Director. Average slope calculations and supporting documentation shall be submitted to the Director for review. Within 20 days of receipt, the Director shall: (a) request additional information; (b) request revisions to the average slope calculation submittal; or (c) issue written concurrence with the determination of average slope, as submitted.

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- (2) Each slope calculation submitted to the director for review shall include a scaled map, accurately showing (a) topography for the entire land tract, (b) a closed perimeter line delineating a single area proposed for any type(s) of land of land-disturbing activity, and (c) the deeded land tract boundary. The accuracy and detail of the map shall be acceptable to the director for site specific conditions and the particular land-disturbing activities proposed. In certain cases, the director may, at their discretion, require that the slope calculation and associated mapping be prepared by a NC Professional Land Surveyor, a NC Professional Engineer, or a NC Professional Landscape Architect.
- (3) For an individual building site, the basis of the average slope calculation will include only the building and grading envelope for such site. For subdivisions, the average slope calculation shall be based on the entire tract to be subdivided unless the subdivider has elected to exclude areas subject to an absolute conservation easement pursuant to §92.206(J) or the Director has approved a division of area pursuant to §92.206(K) below.
- (4) Land slopes shall be calculated based on both (i) the downstream drainage slope from the highest, most remote point within delineated area of proposed land-disturbance, and (ii) the upstream drainage slope from the lowest, most remote point within the delineated area of proposed land-disturbance in accordance with the following requirements.
- (5) Land slope based on the highest, most remote point shall be calculated by determining the maximum horizontal length of drainage travel (D) from the highest, most remote point (Elevation H1) within the delineated area of land-disturbance in a downslope, drainage direction and perpendicular to topographic contours for the greatest distance to the lowest point (Elevation H2) at which drainage would exit the delineated area of proposed land-disturbance. Slope based on the highest, most remote point shall be calculated using the following formula:

$$S_a = ((H1-H2)/D)(100)$$

Where:

S_a = slope expressed as a percentage

H1 = elevation of highest, most remote point

H2 = elevation of the lowest point drainage point
below H1

D = is the maximum length of drainage travel
between points H1 and H2 expressed as a
horizontal measurement (D is not necessarily
a straight line distance)

- (6) Land slope based on the lowest, most remote point shall be calculated by determining the maximum horizontal length of drainage travel (D) from the lowest, most remote point

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(Elevation L2) within the delineated area of land-disturbance in an upslope direction and perpendicular to topographic contours for the greatest distance to the highest point (Elevation L1) at which location drainage to point L2 would begin within the delineated area of proposed land-disturbance. Slope based on the lowest, most remote point shall be calculated using the following formula:

$$S_b = ((L1-L2)/D)(100)$$

Where:

- S_b = slope expressed as a percentage
- L1 = elevation of highest point above drainage point L2
- L2 = elevation of the lowest, most remote point
- D = is the maximum length of drainage travel between points L1 and L2 expressed as a horizontal measurement (D is not necessarily a straight line distance)

Average slope shall be the greater of S_a or S_b rounded off to the nearest one percent.

- (J) **Conservation Easements.** Lands subject to an “absolute” conservation easement, that is, an easement in which the landowner retains no development rights, may, at the landowners’ option, be excluded when determining average natural slope under this ordinance.
- (K) **Division of Area.** Where there is a substantial variation in the landform character within one site, the site may, with the Director’s approval, be divided into two or more distinct areas for the purposes of slope determination. Generally, this provision shall only be used in cases where large tracts of property encompass flat land as well as significant mountain and hillside terrain. Details for each division must be provided.
- (L) **Storm Drainage.** The potential for rapid erosion is extremely high in mountainous and hillside areas. Steep slopes create perfect conditions for rapid movement of soils downhill during rainfall. Therefore, it is essential to address storm water drainage and soil and erosion before land disturbing activities begin. Natural drainage flows shall be maintained wherever possible and developers and landowners are encouraged to use the best technology available to reduce the effects of this increased flow. All applications that affect the natural flow of storm water must meet all local regulations, including, without limitation, the Soil Erosion and Sedimentation Control Regulations. Storm water flow shall not be altered from its natural flow so

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as to impact or damage the property of others.

- (M) ***Clearing and Grading.*** A great deal of environmental damage associated with new development can be avoided if construction and the position of the development site are well planned. As the most potentially destructive part of the construction process, grading must be carefully planned and executed to maintain the stability of protected mountain and hillside property. The choice of an appropriate building site is the key to minimizing potential erosion problems. Grading, if required on the site, shall not take place prior to development plan approval and issuance of any permit required by the Soil Erosion and Sedimentation Control Regulations. Only areas which have been approved for disturbance may be disturbed, and then only after all erosion measures and other regulations have been met.

The Applicant's plans for meeting the following standards will be reviewed during planning or before construction begins:

- (1) Cut and fill activities shall be minimized by carefully selecting the site for structures, drainfields, septic tanks, etc.
 - (2) Grading areas shall be clearly marked before any grading begins. Highly visible fencing is recommended to prohibit earthmoving equipment from moving beyond designated grading boundaries.
 - (3) Grading shall be phased so that prompt revegetation will provide optimal erosion controls.
 - (4) All top and bottom edges of slopes caused by either cut or fill should be a minimum of 2 feet away from property lines.
- (N) ***Retaining Walls.*** Retaining walls, where required, shall be built to follow the contours of the land. Retaining walls any portion of which exceeds ten feet in height shall be designed to blend in with the natural landscape and shall incorporate vegetation to screen them from view.
- (O) ***Requirements for Streets and Driveways.*** No new public or private street, road or driveway serving lands to which this Article is applicable shall be permitted or constructed unless such street, road or driveway complies with the requirements of §91.056 of the Lake Lure Code (Subdivision Regulations) and this section.
- (1) All new public and private streets and roads and all driveways shall be designed and constructed to minimize the potential for landslides, erosion, and runoff.

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- (2) Streets, roads and driveways shall be located such that the maximum number of existing trees on the site is preserved.
- (3) Streets, roads and driveways shall be designed to create the minimum feasible amounts of land coverage and the minimum feasible disturbance of the soil. Variations in roadway design and construction specified by these regulations shall be permitted, as may be approved by the Community Development Director, to prevent the dedication of unnecessarily large amounts of land to such streets, roads or driveways. One-way streets shall be permitted and encouraged where appropriate for the terrain and where public safety would not be jeopardized. For example, a two-way street may have the directions of flow split into one-way pairs that differ in elevation, circumnavigate difficult terrain, or avoid tree clearance. Such streets shall have a minimum pavement width of 16' for one way loop roads and divided streets less than 2500' in length, and 18' for one way loop roads and divided streets 2500' or greater in length, and shall meet all other applicable standards for roads constructed within the Town of Lake Lure.
- (4) Except as may be modified herein, the maximum grade for any street or road is 15%. Grades within 100 feet of an intersection shall not exceed 5% without approval by the Director. Where doing so will result in less disturbance to steep slopes, grades of up to 18% may be approved for distances not to exceed 500 feet per section or 15% of the length of the entire road system in the project, whichever is more. No grades in excess of 15% shall be approved in areas not served by functioning fire hydrants. Those portions of streets or roads for which the grade exceeds 15% shall be paved.
- (5) Except as may be modified herein the maximum grade for any new driveway is 22%. Grades of up to 25% may be authorized for distances not to exceed 300 feet where doing so will result in less disturbance to steep slopes. Where grades greater than 15% are authorized, driveways shall be paved. Where grades in excess of 22% are authorized, driveways shall have a minimum pavement width of 12 feet.

§ 92.207 Requirements for Construction of Buildings. Unless exempted by the terms of this section, no residential or nonresidential building or manufactured home shall be erected within the area governed by this Ordinance except in compliance with the following provisions.

- (A) ***Disturbance Limits for Single-Family Homes.*** The building and grading envelope for any lot subject to this ordinance shall not exceed the limits imposed in Table 2, below. Furthermore, impervious surfaces within the building and grading envelope shall not exceed the limits imposed in Table 2, below. No development or land disturbance activity may occur in the following areas of a parcel.

- (1) Rock outcroppings;
- (2) Wetlands or buffer areas along streams;
- (3) Natural drainage ways;
- (4) All sensitive natural areas;
- (5) Significant historical and archeological resource areas as defined by the National Register of Historic Places or other federal and state agencies.

TABLE 2

Average Natural Slope of Lot	Maximum Percent of Lot That May Be Disturbed	Maximum Percent of Lot That May Be Impervious Surface
30--34%	25	20
35--39%	20	15
40% or more	15	10

The provisions of this paragraph shall not apply to the crossing of streams and creeks for utility corridors and roadways if construction does not exceed 1,000 square feet, does not reduce drainage, and meets all other criteria for land disturbance activities as set forth in the Lake Lure Soil Erosion and Sedimentation Control Regulations.

- (B) ***Disturbance Limits for Lots Intended for Other than Single-Family Homes.*** For lots intended for development as other than single-family homes, the building and grading envelope and impervious surfaces shall be the minimum necessary to develop the property for its intended use as authorized in the conditional use permit for the project and shall otherwise comply with the requirements of this section.
- (C) ***Building and Grading Envelopes.*** To the extent practical, building and grading envelopes shall be sited so as to minimize the visibility of any structures to be placed thereon from public rights-of-way or public lands. This may be accomplished through natural terrain, existing vegetation or other means approved by the director.
- (D) ***Setbacks.*** Setbacks shall be used to protect natural features of the mountain and hillside terrain. Placing structures away from the shoulder reduces the visual impact of development as well as erosion on steep slopes. All structures shall be set back a minimum of 20 feet above the shoulder of a ridge line. The shoulder is defined as the plane at which the slope of the land changes from greater than 20% to a ridge top of less than 20%. Natural vegetation shall be maintained undisturbed within the setback area except for access to a lot or limited cutting to provide a view. All other setbacks including, but not limited to, those from streams, creeks, springheads and property lines

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shall be met as required by the Town Code with the following exception. Often in steep-slope settings, the preferred placement of a structure is immediately adjacent to the roadway, thereby minimizing the amount of disturbance of the hillside. The community development director shall have authority to reduce the minimum front yard requirements in such circumstances.

- (E) ***Outdoor Lighting.*** While lighting outside of homes is often necessary, it can be quite obtrusive in the night skyline. Mountainous and hillside areas are generally rural in character and should be maintained as such even in the presence of development. The following shall apply to the placement of outside lights:
 - (1) Except for landscaping lighting not exceeding a height of 24 inches, all lights shall have fully-shielded fixtures that direct the light downward. These shields shall eliminate scattered light and excessive glare.
 - (2) Light poles shall not exceed the height of surrounding buildings.
- (F) ***Landscaping.*** Because the mountainous and hillside areas of Lake Lure are largely valued for their natural beauty, it is the intention of these regulations to preserve this forested quality.
 - (1) No construction equipment or development is permitted outside the building and grading envelope.
 - (2) Revegetation is required on all disturbed areas that remain after construction, including areas around permanent structures, resurfaced areas such as driveways and areas of cuts and fills, pursuant to land disturbance regulations. Where trees have been removed due to insect damage or disease, and this tree removal increases land disturbance so that it exceeds the maximum building and grading envelope, replanting is required.
 - (3) Riparian buffers act to intercept sediment, nutrients, pesticides, and other materials in surface runoff and reduce nutrients and other pollutants in shallow subsurface water flow. They also serve to provide habitat and wildlife corridors and can reduce erosion by bank stabilization. All buffers shall be protected in accordance with applicable requirements in the Soil Erosion and Sedimentation Control Requirements contained in Chapter 96 of the Town's Code.
 - (4) Any clearing or thinning of trees or other vegetation shall be accomplished in accordance with the requirements of §§92.119 and 92.120, above.

SECTION SIX. Section 92.041 of the Zoning Regulations of the Town of Lake Lure, entitled “Protected Mountain Ridge Overlay Zones”, is hereby created to read as follows:

§ 92.041 Protected Mountain Ridge Overlay Zones.

- (A) **Intent.** Mountain ridges provide a key sense of place and are a key economic asset for the people of the Town of Lake Lure. Certain mountain ridges, by virtue of their topography, are particularly visible, and, thus, have greater potential to impact the values listed above. Protected Mountain Ridge Overlay Zones are intended to protect viewsheds associated with prominent mountain ridges from development activities which are likely to adversely impact these assets.
- (B) **Applicability.** There are hereby created the Protected Mountain Ridge Overlay Zones as depicted on the map entitled “Protected Mountain Ridge Overlay Zone Map”, which is attached hereto and which is hereby adopted as if fully set forth in this Ordinance. Said map shall be attached to the Town Clerk’s copy of this Ordinance upon adoption and shall be duly incorporated into the Zoning Map of the Town of Lake Lure. In addition to complying with all applicable standards of the underlying zoning district, development on lands situated within such overlay zones shall also comply with the standards contained in this section..
- (C) **Building Height.** The maximum building height shall be the maximum building height prescribed in Section 92.040, above, or the height of the existing tree canopy on the site, whichever is less.
- (D) **Building Location.** To the extent practicable, each building shall be located so as to minimize its visual impact.
- (E) **Partial Screening.** A portion of natural on-site vegetation shall be retained sufficient to partially screen (along fifty percent of the building face, or that achieves fifty percent opacity or more along the building face) the building, structure, use, or activity from views from public roads not serving the building, or landscaping shall be installed and designed to partially screen the building, structure, use, or activity from views from public roads, or other measures have been included in the project and approved by the director to reduce the visual impacts of such development from views from public roads.

View corridors from the proposed building to surrounding areas may be provided, but such corridors shall not extend for more than fifty percent of the width of building face between the view sought and the building face from which the view is sought.
- (F) **Tree Protection.** Trees which are part of the tree canopy or required screening shall not be removed unless they constitute a danger to person or property and only with written authorization of the tree protection officer.

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- (G) **Roofs.** Roof forms and roof lines for new structures shall be broken into a series of smaller building components to reflect the irregular forms of the surrounding mountain or hillside. The slope angle of roof pitch shall be at or below the angle of the natural hillside slope. The slope of the roof shall be oriented in the same direction as the natural slope of the lot. Only nonreflective roofing materials shall be used.

SECTION SIX. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 91.999 of the Subdivision Regulations and / or Section 92.999 of the Zoning Regulations, as applicable.

SECTION SEVEN. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION EIGHT. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION NINE. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing zoning violations.

SECTION TEN. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 18th day of November, 2008.

ATTEST:

Mary A. Flack, MMC
Town Clerk

Russ Pitts
Mayor Pro Tem

Approved as to content and form:

J. Christopher Callahan
Town Attorney

Commissioner Noble explained her reason for voting for this ordinance being because of issues related with Lago Vista and Commissioner Turner agreed.

Paula Jordan suggested that it would be very useful if everyone who has expressed an interest in helping the Zoning and Planning Board with the concerns mentioned during the hearing leave their name and contact information.

PUBLIC FORUM

Mayor Proctor invited the audience to speak on any non-agenda item and/or consent agenda topics and the following requested to speak.

1. Richard Laughridge, reported an erosion problem on Boys Camp Road caused by rain and mud coming down from the State Park property onto Garden Lane.

Commissioner Pitts requested that Mr. Laughridge work with the town manager to come up with a solution to this problem.

2. John Bittle suggested that the town require subdivisions to put in a sewer system. He said this would help prevent some of the erosion problems and save trees.
3. Paul Jordan made an announcement about the Lake Lure Police Department's third annual "Evening of Honor" benefit dinner and awards ceremony presented by Larkin's on the lake on Friday, November 21, 2008 at 5:30 p.m.

STAFF REPORTS

Town Manger Wheeler reported on the council action items log. He made copies of this report available at the meeting for anyone interested.

COUNCIL LIAISON REPORTS & COMMENTS

Commissioner Turner reported on the activities of the Parks and Recreation Board.

Commissioner Noble reported on the activities of the Lake Advisory Committee and the Golf Course Committee.

Commissioner Hyatt reported on the activities of the Lake Lure ABC Board and the Board of Adjustment/Lake Structures Appeals Board.

Commissioner Pitts reported on the activities of the Zoning and Planning Board. Mr. Pitts reported on activities of the YMCA Leadership focus group and the potential of getting a YMCA in Lake Lure.

CONSENT AGENDA

Mayor Pro Tem Pitts presented the consent agenda and asked if any item should be removed before calling for action.

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Commissioner Noble moved, seconded by Commissioner Turner, to approve the consent agenda items as presented. Therefore, the consent agenda, incorporating the following items were unanimously approved and adopted:

- a. minutes of the October 14, 2008 (regular meeting);
- b. an agreement between the Town of Lake Lure and Garry V. Cooper, FAICP for facilitation and technical planning services; (Attached is a copy of the agreement with Garry V. Cooper);
- c. Ordinance No. 08-11-18A a Fats, Oils and Grease Control Ordinance; and

ORDINANCE NUMBER 08-11-18A

AN ORDINANCE AMENDING CHAPTER 51, OF THE TOWN OF LAKE LURE CODE OF ORDINANCES, ADDING SECTION 51.18 FATS, OILS, AND GREASE CONTROL ORDINANCE

WHEREAS, Town Staff and the Special Order of Consent of the NCDENR Division of Water Quality has recommended a Fats, Oils, and Grease Control Ordinance be added to Chapter 51; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF TOWN COUNCIL VOTING IN THE AFFIRMATIVE.

SECTION ONE. Section 51.18 of Chapter 51 of the Code of Ordinances of the Town of Lake Lure is hereby added as follows:

Section 51.18. Fat, Oil, and Grease Control

- (a) *Scope and purpose.* The objective of this section is to aid in preventing the introduction and accumulation of fats, oils, and greases into the municipal wastewater system which will or tend to cause or contribute to sanitary sewer blockages and obstructions. Food Service Establishments and other industrial or commercial establishments generating wastewater containing fats, oils or greases are subject to this section. This section regulates such users by requiring that grease interceptors and other approved strategies be installed, implemented, and maintained in accordance with the provisions hereof.

- (b) *Definitions.*

Action Level means the concentration based numeric value that the Grease interceptor effluent, at the device's outlet tee and prior to mixing with any other waste water from the contributing establishment's property, are expected to achieve on a consistent or stipulated basis.

Common interceptor means one or more interceptors receiving FOG laden wastewater from more than one establishment. Common interceptors may be located at shopping centers, malls, entertainment complexes, sporting arenas, hotels, multi-tenant "flex" spaces, mixed use spaces,

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and other sites where multiple establishments are connected to a single grease interceptor. The owner of the property on which the common grease interceptor is located shall be primarily responsible for the maintenance, upkeep, and repair of the common interceptor.

Fats, oils, and greases means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CRF 136, as may be amended from time to time. All are sometimes referred to herein as “grease” or “greases” or “FOG”.

Food Service Establishments or “FSE” means those establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs and that use one or more of the following preparation activities: Cooking by frying (all methods), baking (all methods), grilling, sautéing, rotisserie cooking, broiling (all methods), boiling, blanching, roasting, toasting, or poaching, and infrared heating, searing, barbecuing, and any other food preparation or serving activity that produces a consumable food product in or on a receptacle requiring washing to be reused.

FOG enforcement response plan means the document and written plan and procedures by which the Utility Director implements an enforcement strategy applicable to the FOG control and management program established herein. The plan applies to FOG program violations and matters of program noncompliance. Stipulated penalties for specific and programmatic infractions are addressed in the plan and set forth in the Town’s annual budget ordinance. The Utility Director shall make site and case specific determinations of program non-conformance in accordance with this Division 2.

Grease trap or interceptor means a device for separating waterborne greases and grease complexes from wastewater and retaining such greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps also serve to collect solids that settle, generated by and from activities that subject Users to this section, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps and interceptors are sometimes referred to herein as “grease interceptors.”

Minimum design capability means the design features of a grease interceptor and its ability or volume required to effectively intercept and retain greases and settled solids from grease-laden wastewaters discharged to the public sanitary sewer.

Non-cooking establishments means those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking: but that may produce a consumable food product in or on a receptacle requiring washing to be reused.

Onsite grease interceptor treatment (sometimes “Onsite Treatment”) means mechanisms or procedures utilized by a user to treat grease interceptor contents on the User’s site, followed by the reintroduction of such treated wastewater back into the interceptor. Onsite grease interceptor treatment may only be accomplished by a user if the user or the user’s contract service provider is permitted by the North Carolina Division of Waste Management as a septage management

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firm or service provider.

Service provider means any third party not in the employment of the user that performs maintenance, repair, and other services on a user's grease interceptor at the user's directive.

- (c) *Grease interceptor installation, maintenance, recordkeeping, and grease removal.*
- (1) Grease interceptors shall be installed and maintained at the user's expense, when a User operates a food service establishment. Grease interceptors may be required in noncooking or cold dairy and frozen foodstuffs establishments and other industrial or commercial establishments when the establishment generates wastewater containing fat or grease and the Utility Director determines an interceptor is necessary to prevent contribution or accumulation of grease to the sanitary sewer collection and treatment system. Upon notification by the Utility Director or designee that the user is subject to the terms of an enforcement action, said user shall not allow wastewater discharge concentration from subject grease interceptor to exceed an establishment action level of 100 milligrams per liter, expressed as Hexane Extractable Material. All grease interceptors shall be of a type, design, and capacity approved by the Utility Director and shall be readily and easily accessible for maintenance, and repair, including cleaning and for town inspection. All grease interceptors shall be serviced and emptied of accumulated waste content as required in order to maintain minimum design capability or effective volume of the grease interceptor, but not less often than every sixty (60) days or as permitted in a valid program modification. Users who are required to pass wastewater through a grease interceptor shall:
- a. Provide a minimum hydraulic retention time of 24 minutes at actual peak flow between the influent and effluent baffles, with twenty-five percent (25%) of the total volume of the grease interceptor being allowed for any food-derived solids to settle or accumulate and floatable grease derived material to rise and accumulate, identified hereafter as a solids blanket and grease cap respectively."
 - b. Remove any accumulated grease cap and solids blanket as required, but at intervals of not longer than sixty (60) days at the user's expense, or in accordance with the valid program modification or other Utility Director's requirements. Grease interceptors shall be kept free of inorganic solid materials, such as grit, rocks, gravel, sand, eating utensils, cigarettes, shells, towels, rags, etc., which could settle into this solids blanket and thereby reduce the effective volume of the grease interceptor.
 - c. If the user performs onsite grease interceptor treatment pursuant to a modification granted below, user shall:
 1. Prior to commencement of Onsite Treatment obtain written approval by and from the Utility Director of all processes utilized in said onsite treatment.
 2. If any pumped wastes or other materials removed from the grease interceptor are treated in any fashion onsite and reintroduced back into the grease interceptor as an activity of and after such onsite treatment, the user shall meet the criteria contained in (c)(1)(c)(3) below.
 3. Attain and adhere to the criteria listed below:

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- a. After 30 minutes of setting time, not more than 3.0 ml/L of settleable solids, as measured in a 1 liter Imhoff cone shall be allowed.
 - b. Within and not more than 24 hours after onsite grease interceptor servicing, not more the 2" (inches) of settleable solids and/or grease shall be allowed to have accumulated therein as a result of said operations.
 - c. Service vehicles and equipment used in onsite Grease interceptor servicing shall be registered with the Public Works and Utilities Department, and as required by the North Carolina Division of Waste Management.
 - d. When servicing grease interceptors service vehicles and equipment shall have onboard, at all times, a certificate of approval for the operations and methods used, issued by the Utility Director.
 - e. Any tanks, tankage, or vessel(s) associated with a modification shall be empty upon arrival at the initial FSE user site for which this modification is intended to be applied.
- d. Operate and maintain the grease interceptor to achieve and consistently maintain any applicable grease action level. "Consistent" shall mean any wastewater sample taken from such grease interceptor must meet the terms of numerical limit attainment described in subsection (C) (1). If a user documents that conditions exist ("space constraints") on their establishment site that limit the ability to locate a grease interceptor on the exterior of the establishment, the user may request an interior location for the interceptor. Such request shall contain the following information:
- 1. Location of town sewer main and easement in relation to available exterior space outside building.
 - 2. Existing plumbing layout at or in a site.
 - 3. A statement of understanding, signed by the user or authorized agent, acknowledging and accepting conditions Utility Director may place on permitting an identified interior location. Conditions may include requirements to use alternative mechanisms, devices, procedures, or operations relative to an interior location.
 - 4. Such other information as may be required by the Utility Director.
- e. The use of biological or other additives as a grease degradation or conditioning agent is permissible only upon prior written approval of the Utility Director. Any user using biological or other additives shall maintain the trap or interceptor in such a manner that attainment of any grease wastewater, action level, solids blanket or grease cap criteria, goal

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or directive, as measured from the grease interceptor outlet of interior, is consistently achieved.

- f. The use of automatic grease removal systems is permissible only upon prior written approval of the Utility Director, the lead plumbing inspector of Rutherford County, and the Rutherford Polk McDowell District Health Department or the US Department of Agriculture. Any user using a grease interceptor located in the interior of the site shall be subject to any operational requirements set forth by the North Carolina Division of Waste Management. Any user using equipment shall operate the system in such a manner that attainment of the grease wastewater discharge limit as measured from the unit's outlet, is consistently achieved as required by the Utility Director.
- g. The Utility Director may make determinations of grease interceptor adequacy need, design, appropriateness, application, location, modification(s), and conditional usage based on review of all relevant information regarding grease interceptor performance, facility site and building plan review by all regulatory reviewing agencies may require repairs to, or modification or replacement of grease interceptors.
 - (1) The user shall maintain a written record of grease interceptor maintenance for three years. All such records will be available for inspection by the town at all times. These records shall include:
 - a. FSE name and physical location
 - b. Date of grease interceptor service
 - c. Time of grease interceptor service
 - d. Name of grease interceptor service company
 - e. Name and signature of grease interceptor service company agent performing said service
 - f. Established service frequency and type of service: full pump-out, partial pump-out, onsite treatment (type of nature of operations)
 - g. Number and size of each grease interceptor serviced at FSE location
 - h. Approximated amount, per best professional judgment of contract service provider, of grease and solids removed from each grease interceptor
 - i. Total volume of waste removed from each grease interceptor
 - j. Destination of removed wastes, food solids, and wastewater disposal
 - k. Signature and date of FSE personnel confirming service completion
 - l. Such other information as required by Utility Director
 - (2) No non-grease-laden sources are allowed to be connected to sewer lines intended for grease interceptor service.
 - (3) Access manholes shall have an installed diameter of 24 inches, a maximum weight of 50 pounds, and shall be provided over each chamber, interior baffle wall, and each sanitary tee. The access penetrations, commonly referred to as "risers" into the grease interceptor shall also be, at a minimum, 24 inches in diameter. The access manholes shall extend at least to finished grade and be designed and maintained to

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prevent water inflow or infiltration. The manholes shall also have readily removable covers to facilitate inspection, grease removal, and wastewater sampling activities.

- (4) A user may request a modification to the following requirements of this ordinance. Such request for a modification shall be in writing and shall provide the information set forth below.
 - (a) The user's grease interceptor pumping frequency The Utility Director may modify the sixty (60) days grease interceptor pump out frequency when the user provides data, and performance criteria relative to the overall effectiveness of a proposed alternate and such can be substantiated by the Utility Director. Proposed alternatives may include: grease interceptor pumping or maintenance matters, bioremediation as a complement to grease interceptor maintenance, grease interceptor selection and sizing criteria, onsite grease interceptor maintenance, and specialized ware washing procedures.
 - (b) Grease interceptor maintenance and service procedures. The Utility Director may modify the method(s) or procedure(s) utilized service a grease interceptor when the user provides data, and performance criteria relative to the overall effectiveness of a proposed alternate method or procedure and such can be substantiated by the Utility Director. If a modification to maintenance and service procedures is permitted it shall be a conditional discharged permit approval.
 - (c) Any modification must be approved by the Utility Director in written form before implementation by the user or the user's designated service provider.

SECTION TWO. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Article VIII- Penalties of the Sewer Use Ordinance as Amended in 1988.

SECTION THREE. All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this division are hereby repealed to the extent of such inconsistency or conflict.

SECTION FOUR. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

SECTION FIVE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 18th day of November, 2008.

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ATTEST:

Mary A. Flack, MMC
Town Clerk

Mayor Pro Tem Russ Pitts

Approved as to form and content:

J. Christopher Callahan
Town Attorney

- d. authorize the Mayor Pro Tem on behalf of Town Council to inform the Zoning and Planning Board about a clerical correction as outlined by Mayor Pro Tem with regards to a memorandum from the Mayor dated October 20, 2008 pertaining to a directive regarding utility easements.

End of Consent Agenda.

UNFINISHED BUSINESS:

a. Other Unfinished Business

There was no other unfinished business for discussion.

NEW BUSINESS:

- a. Consider a Request from John D. Harrison Owner J. D. Harrison Investments LLC for Approval to Release the Bond Agreement with the Town Regarding the Installation of Improvements for Blue Heron Point Subdivision**

Amos Gilliam, Planner and Subdivision Administrator, reviewed and answered questions pertaining to a request from John D. Harrison owner of J. D. Harrison Investments LLC . Mr. Gilliam informed Town Council that Mr. Harrison is requesting approval of a release of the bond agreement with the town regarding the installation of improvements for the Blue Heron Point Subdivision. He said the applicant is requesting a reduction in the amount of the bond from \$1,008,850 to \$0 due to the complete installation of all required infrastructure. Mr. Gilliam stated that the installed infrastructure has been certified by the developers engineer, and reviewed by the town's engineer and have been found to be in compliance with all applicable town approvals. All inspections indicate that the developer has installed the private roads, and the water and sewer systems within town standards. The developer has been actively working with town staff to provide information, and comply with all requests.

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After discussion, Commissioner Hyatt made a motion to approve the request from John D. Harrison owner of J. D. Harrison Investments LLC to release the bond agreement with the town regarding the installation of improvements for Blue Heron Point Subdivision and reduce the amount of the bond from \$1,008,850 to \$0 due to the complete installation of all required infrastructure. Commissioner Turner seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

b. Consider a Request from Adrienne Wallace on Behalf of the Chimney Rock State Park to Install a Repeater & Antenna on the Water Tank Located off of Highway 9

Town Manager Wheeler reviewed and answered questions regarding a request from Adrienne Wallace on behalf of the Chimney Rock State Park to install a repeater and antenna on the water tank located off of Highway 9. (Attached is a letter dated October 28, 2008 from Adrienne Wallace.)

After discussion, Commissioner Noble made a motion to approve the request from Adrienne Wallace on behalf of the Chimney Rock State Park to install a repeater and antenna on the water tank located off of Highway 9 as outlined in the letter from Adrienne Wallace dated October 28, 2008. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

Kent Covington, President of Sky Catcher Communications, Inc., informed council members about a proposal to extend the wireless infrastructure throughout the Town of Lake Lure which will provide internet access to the community as well as allowing the town to use the network for police and other emergency agencies. He agreed to submit a formal proposal to town council to be considered for approval.

After discussion, Commissioner Hyatt made a motion to request that a formal proposal from Sky Catcher Communications, Inc be submitted to town council for approval to extend the wireless infrastructure throughout the Town of Lake Lure which will provide internet access to the community as well as allowing the town to use the network for police and other emergency agencies. Commissioner Turner seconded the motion and the vote of approval was unanimous.

CLOSED SESSION

A motion was made by Commissioner Turner to enter into the closed session in accordance with G.S. 143-318.11(a) (3) to discuss legal matters and attorney client privilege regarding a lawsuit between Faulein Swaringen Beio and the Town of Lake Lure. Commissioner Noble seconded the motion and the vote of approval was unanimous.

While in closed session, Council members voted to seal the minutes of the closed session meeting in order to avoid frustrating the purpose of the closed session.

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With no further items of discussion in closed session, Commissioner Turner made a motion to come out of the closed session meeting and re-enter the regular session of the town council meeting at 9:55 p.m. Commissioner Noble seconded the motion and the vote of approval was unanimous.


After discussion, Commissioner Turner made a motion to authorize Town Attorney Chris Callahan to pursue civil recovery measures on the monies related to the failed wastewater treatment plant project and authorize Attorney Jack Cloninger to assist him. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

ADJOURN THE MEETING

With no further items of discussion, Commissioner Turner made a motion to adjourn the meeting at 10:00 p.m. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

ATTEST:





Mary A. Flack, MMC
Town Clerk

Mayor Pro Tem Russ Pitts