

**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL
HELD TUESDAY, JULY 14, 2009, 7:00 P.M. AT THE LAKE LURE MUNICIPAL CENTER**

PRESENT: Mayor Jim Proctor
Commissioner Bill Beason
Commissioner Wayne Hyatt
Commissioner Russ Pitts
Commissioner Linda Turner

Christopher Braund, 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.

INVOCATION

Attorney Callahan gave the invocation.

APPROVE THE AGENDA

After discussion, Commissioner Hyatt made a motion to approve the agenda as presented.
Commissioner Turner seconded the motion and the vote of approval was unanimous.

<p>PUBLIC HEARING - CONSIDER PROPOSED ORDINANCE NO. 09-07-14 AMENDING THE TOWN OF LAKE LURE ZONING REGULATIONS, TITLE IX, CHAPTER 92, ESTABLISHING A NEW SECTION 92.042 REGULATING THE USE OF RESIDENCES AS VACATION RENTALS; PROVIDING DEFINITIONS; DELETING BOARDING AND ROOMING HOUSES, NON-PROFIT RETREATS AND NON-PROFIT LODGES AS CONDITIONAL USES IN THE R-2 ZONING DISTRICT; MAKING RESIDENTIAL VACATION RENTALS A PERMITTED USE SUBJECT TO SPECIAL REQUIREMENTS IN THE R-3, R-4, C-1, CN, CTC, CG AND S-1 ZONING DISTRICTS; MAKING RESIDENTIAL VACATION RENTALS A TEMPORARY USE IN THE R-1, R-1A, R-1B, R-1C, R-1D, R-2 AND M-1 ZONING DISTRICTS; PROVIDING FOR THE EXPIRATION OF THE TEMPORARY USE OF RESIDENTIAL VACATION RENTALS; PROVIDING FOR FURTHER STUDY OF THE ISSUE OF THE IMPACTS OF RESIDENTIAL VACATION RENTALS</p>
--

Page 2 - Minutes of the July 14, 2009 Regular Council Meeting

Mayor Proctor opened the public hearing regarding proposed Ordinance No. 09-07-14 and invited citizens to speak during the public hearing and the following requested to speak: Lindsey Rogalski, Carole McKay, Tom McKay, Lynn Smith, Susan McGowan, David Klett, Frankie Pearson, Dr. Julianne Thrift, John W. Moore, Mary Potter, Kim Zappel, John Kilby, George L. Powell, Deborah Morgan, John Dell, Delphine Jones, Tom Cox, Valerie Wrobel, Brenda Tomlo, Thomas Tomlo, Debbie O. Nance, Cindy Bock, Jane Phillips, Nancy McNary, Travis Oates, Roger Rusnak, Gary McCall, Bill Fry *ks46*

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

<p>ADOPT ORDINANCE NO. 09-05-12 AMENDING THE TOWN OF LAKE LURE LAKE STRUCTURE REGULATIONS, TITLE IX, CHAPTER 94, ESTABLISHING THE POWERS, DUTIES AND PROCEDURES OF THE LAKE STRUCTURE APPEALS BOARD</p>
--

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. 09-05-12 as presented. Commissioner Turner seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 09-05-12

AN ORDINANCE AMENDING CHAPTER 94 OF THE TOWN OF LAKE LURE CODE (THE LAKE STRUCTURE REGULATIONS) TO ESTABLISH THE POWERS, DUTIES AND PROCEDURES OF THE LAKE STRUCTURE APPEALS BOARD

WHEREAS, the Lake Advisory Committee has recommended modifications to the Lake Structure Regulations of the Town of Lake Lure as noted in the title of this ordinance; and

WHEREAS, the Town has authority to enact this Ordinance pursuant to the Town's general corporate powers contained in N.C.G.S. 160A-11 and its general ordinance-making power contained in N.C.G.S. 160A-174; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 12th day of May, 2009, upon the question of amending the Lake Structure Regulations in this respect.

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:

Page 3 - Minutes of the July 14, 2009 Regular Council Meeting

SECTION ONE. Section 94.16 of the Lake Structure Regulations of the Town of Lake Lure, entitled "Variances", is hereby repealed and replaced by the following new Section 94.16:

§ 94.16 LAKE STRUCTURE APPEALS BOARD

- (A) *Membership.* The Lake Structure Appeals Board shall consist of five regular and three alternate members to be appointed by the Town Council. Members of the Board shall serve a term of three years, provided that terms of office may be adjusted at the time of appointment in order that terms are staggered. In filling vacancies created by resignation or other causes, a new member may be appointed to fill the unexpired term of the member so vacating. Each alternate member while attending any regular or special meeting of the Board and serving in the absence of any regular members shall have and may exercise all the powers and duties of a regular member. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Lake Structure Appeals Board.
- (B) *Rules of Conduct.* Board members shall comply with the following rules of conduct. Members may be removed by the Town Council for cause, including violation of the rules stated below.
 - (1) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.
 - (2) No Board member shall take part in the hearing, consideration or determination of any case in which he is personally or financially interested. A Board member shall have a financial interest in a case when a decision in the case will cause him or his spouse to experience a direct financial benefit or loss; or will cause a business in which he or his spouse owns any interest to experience a direct financial benefit or loss. A Board member shall have a personal interest in a case when it involves a member of his immediate family (i.e. parent, spouse or child).
 - (3) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Lake Structure Administrator or any other member of the Board, its secretary or clerk prior to the hearing.
 - (4) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.
 - (5) Members of the Board shall give notice to the Chair at least 48 hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.

Page 4 - Minutes of the July 14, 2009 Regular Council Meeting

- (6) No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal.
- (C) *General Proceedings.* The Board shall annually elect a Chair and a Vice Chair from among its members. A secretary shall be provided by the Town; however, when necessary, the Chair shall appoint a secretary, who may be an employee of the town, a municipal officer, or a member of the Lake Structure Appeals Board. The Chair, or in his absence the Vice Chair, may administer oaths and request the attendance of witnesses. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, or abstention from voting, if any, together with records of its examinations and other official actions.
- (D) *Meetings.* The Board shall hold regular monthly meetings at a specified time and place. Special meetings of the Board may be called at any time by the Chair or by request of three or more members of the Board. At least 48 hours written notice of the time and place of meetings shall be given, by the Chair, to each member of the Board. All Board meetings are to be held in accordance with G.S. Ch. 143, Art. 33C, commonly referred to as the Open Meetings Act.
 - (1) *Cancellation of Meetings.* Whenever there are no appeals, applications for conditional uses or variances, or other business for the Board, or whenever so many members notify the secretary of inability to attend that a quorum will not be available, the Chair may dispense with a meeting by giving written or oral notice to all members.
 - (2) *Quorum.* A quorum shall consist of three members of the Board, but the Board shall not pass upon any questions relating to an appeal from a decision or determination of the Lake Structure Administrator, or an application for a variance or conditional use permit when there are less than four members present.
 - (3) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in § 94.16(B)(2), above. The required vote to decide appeals and applications shall be as provided in § 94.16(H) and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board.
- (E) *Powers and Duties.* The powers and duties of the Lake Structure Appeals Board shall be as follows:
 - (1) *Administrative Appeals.* To hear and decide appeals from any decision or determination made by the Lake Structure Administrator in the enforcement of this Chapter.

Page 5 - Minutes of the July 14, 2009 Regular Council Meeting

- (2) *Variances.* Upon application, the Lake Structure Appeals Board may authorize in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in practical difficulty or unnecessary hardship. The variance may be permitted as long as the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. The Lake Structure Appeals Board shall not have authority to grant a variance when to do so would permit a use of land, building or structure which is not permitted within the applicable zoning district.

In judging an application for a variance, the Lake Structure Appeals Board shall be guided by the following:

- (a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
- (b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
- (c) A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
- (d) The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.
- (e) The special circumstances are not the result of the actions of the applicant.
- (f) The variance is the minimum that will make possible the reasonable use of the land, building or structure.
- (g) A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts, will not be considered grounds for the issuance of a variance.

In granting any variance, the Lake Structure Appeals Board may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable under

Page 6 - Minutes of the July 14, 2009 Regular Council Meeting

§ 94.999.

- (3) *Other Matters.* The Board shall hear any other matters specified in this Chapter.
- (F) ***Procedure for Filing Appeals and Applications.*** No appeal shall be heard by the Board unless written notice thereof is filed within 30 days after the interested party or parties receive the decision or determination by the Lake Structure Administrator. Applications for variances or for other matters governed by this Chapter may be filed at any time. Both appeals and applications shall be filed with the Lake Structure Administrator, who shall act as clerk for the Board in receiving this notice. All appeals and applications shall be made upon the form specified for that purpose, and all information required on the form shall be complete before an appeal or application shall be considered as having been filed. Once appeals and applications have been filed with the Lake Structure Administrator, the Lake Structure Administrator shall notify the Chair of the Board that such appeals or applications have been received.
- (G) ***Hearings.*** Hearings before the Board shall be governed by the provisions contained herein.
- (1) *Time.* After receipt of notice of an appeal or a variance, the Board Chair shall schedule a time for a hearing which shall be within 41 days from the filing of such notice of appeal or application.
- (2) *Notice of Hearing.* Notice of any hearing shall be mailed to all affected parties and to such other persons as the Lake Structure Administrator shall direct, at least 14 days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal or application, and the time and place of the hearing.
- (3) *Conduct of Hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:
- (a) The Chair, or such person as he shall direct, shall give a preliminary statement of the case;
 - (b) The applicant shall present the argument in support of his appeal or application;
 - (c) Persons supporting or opposed to the appeal or application shall present their argument against the application or appeal;
 - (d) Both sides will be permitted to present rebuttals to opposing testimony;
 - (e) Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be

Page 7 - Minutes of the July 14, 2009 Regular Council Meeting

admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and any opposing party may cross examine them.

- (H) **Decisions.** A decision by the Board shall be made within 35 days from the date of hearing. The 35-day period shall begin on the date the public hearing ends.
- (1) **Form.** Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the secretary within seven days after the case is decided. Also, written notice shall be given to owners of the subject property and to persons who have made a written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the approved minutes. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made. The decision on an *appeal* may reverse or affirm, wholly or partly, or modify the decision or determination of the Lake Structure Administrator. Where a *variance* is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the application for the variance was based and which the Board finds to exist. The record shall state in detail what, if any, conditions and safeguards are imposed by the Board in connection with the granting of a variance.
- (2) **Voting.** The concurring vote of four-fifths of the members of the Board entitled to vote on a matter shall be necessary to reverse any decision or determination of the Lake Structure Administrator, or to grant a variance or to approve any other request under this Chapter.
- (3) **Public record of decisions.** The decisions of the Board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.
- (I) **Appeals of Decisions of the Board.** Decisions of the Lake Structure Appeals Board shall be final unless appealed by the applicant or an affected property owner to the Town Council within 30 days of such decision. Council shall hold a hearing on the record within 45 days of the appeal, and Council's decision shall be final.
- (J) **Fees for Applications and Appeals.** The fee for an application for a variance or other matter regulated by this Chapter, or for an administrative appeal shall be determined by resolution of the Town Council and shall be payable to the Town.

SECTION TWO. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 94.999 of the Lake Structure Regulations.

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

Page 8 - Minutes of the July 14, 2009 Regular Council Meeting

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

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

Adopted this 12th day of May, 2009.

ATTEST:

Town Clerk Mary A. Flack, MMC

Mayor Jim Proctor

Approved as to content and form:

J. Christopher Callahan
Town Attorney

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. Gary McCall, a Lake Lure resident, asked Council members to consider changing the work hours for town employees and look into the take home vehicle policy. Mr. McCall said he would like to see a reduction in the cost to the town regarding employee benefits. Mr. McCall said surrounding communities were having to make cut backs on employees due to the economy at this time.

Mayor Proctor invited Mr. McCall to attend the upcoming budget workshop meeting being held on May 21st to address his concerns regarding the budget.

2. Ken Jordan asked Council members to amend their agenda to include his request to hold a Fresh Local Art and Produce Market in Lake Lure on the Saturday, May 23, 2009 from 8:00 a.m. until 1:00 p.m.

A motion was made by Commissioner Pitts to amend the agenda to include Mr. Jordan's request. Commissioner Noble seconded the motion and the vote of approval was unanimous.

Page 9 - Minutes of the July 14, 2009 Regular Council Meeting

3. Bill Bush commented on how quiet the air condition was during this meeting. Mr. Bush said he wanted to express his appreciation to who ever worked on it.

STAFF REPORTS

Town Manager Chris Braund read his report into the record dated May 12, 2009. (Copy of the town manager's report is attached).

Mr. Braund distributed copies of the council action items log report and made them available at the meeting for anyone interested.

COUNCIL LIAISON REPORTS & COMMENTS

Mayor Proctor gave a brief report on his recent trip with Council members to Raleigh to attend a hearing before the State Board of Education Leadership for Innovation Committee about the proposed Lake Lure Classical Academy.

The Mayor also read into the record letters dated April 22, 2009 addressed to him from Mrs. Libby Wentzky, Kindergarten Teacher of McLees Elementary School of Anderson, South Carolina and a letter from Michael Crittendon, a student of McLees Elementary School. Michael Crittendon wrote the following:

When I grow up I want to be the Mayor of Lake Lure, North Carolina. I used to get to feed the ducks at Lake Lure. Now I can't do it. I will change the law when I am Mayor.

Mayor Proctor read into the record the following letter of resignation from Commissioner Jeanine Noble.

Dear Mayor, Fellow Commissioners and Citizens of Lake Lure:

Four years ago this past August, I was encouraged to seek election for the Town Council. In November, 2005, I was duly elected and assumed office as Commissioner for Lake Lure December, 2005.

The past three and half years, have been one of the most rewarding times of my life and I've enjoyed every single minute, good and bad.

After 12 years, my husband Fred and I have decided to enter a new phase of our lives and leave Lake Lure.

We never expected to sell our home so quickly, but it was sold within three weeks.

Since we will be living in another County, Henderson, North Carolina. I must regretfully

Page 10 - Minutes of the July 14, 2009 Regular Council Meeting

tender my resignation as Commissioner for the Town of Lake Lure. We will no longer be residents of Lake Lure as of May 20th.

I will take with me many fond and wonderful memories of my time spent with the great town staff. We have faced many new challenges in the past three and a half years and I can only hope that I was able to contribute in some small way to our achievements.

I sincerely thank my fellow commissioners, the mayor and the citizens of Lake Lure for allowing me the privilege of serving this Gem of the Carolinas in a small way.

*My Love and Best Wishes,
Jeanine Noble, Town of Lake Lure Commissioner*

Council members agreed to have a reception at their next regular Council meeting being held on June 9, 2009 to recognize Commissioner Jeanine Noble for her dedicated public service and outstanding contributions as Commissioner of the Town of Lake Lure.

After discussion, Commissioner Turner made a motion to schedule a special budget workshop meeting to be held on Thursday, May 21, 2009 to review the draft budget for fiscal year 2009-2010. Also, appoint a new council member to fill Jeanine Noble's seat on town council. Commissioner Pitts seconded the motion and the vote of approval was unanimous.

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

Commissioner Pitts reported on the activities of the Zoning/Planning Board.

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

CONSENT AGENDA

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

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 :

- a. minutes of the April 14, 2009 (regular meeting and closed session).

End of Consent Agenda.

UNFINISHED BUSINESS:
A. Other Unfinished Business

There was no other unfinished business for discussion.

NEW BUSINESS:

a. REVIEW AND APPROVE THE EXISTING CONFIGURATION OF CERTAIN LAKE STRUCTURES AS SHOWN IN THE "INVENTORY OF LAKE STRUCTURES" REGARDING MARINAS AND CLUSTER MOORINGS

Amos Gilliam, Planner, read into the record his memorandum dated May 4, 2009 pertaining to marina and cluster mooring inventory action items regarding Rumbling Bald Resort Marina, Quail Cove Condominiums, and Pierpoint Subdivisions. (A copy of the memorandum from Amos Gilliam dated May 4, 2009 is attached.)

After discussion, Commissioner Pitts made a motion to schedule a public hearing at the next regular town council meeting being held on June 9, 2009 to consider granting conforming status to Lake Structures at the Rumbling Bald Marina, Quail Cove Condominiums, and Pierpoint Subdivision within the Town of Lake Lure. Commissioner Noble seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

b. CONSIDER A REQUEST FROM THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR APPROVAL OF A TRANSFER OF OWNERSHIP AGREEMENT REGARDING BRIDGE NUMBER 7 OVER THE BROAD RIVER

After discussion, Council members agreed to table approval of the request from the North Carolina Department of Transportation for approval of transfer of ownership agreement regarding bridge number 7 over the Broad River for further study concerning liabilities issues. Town Manager Braund agreed to look into this matter and report his findings back to Town Council.

NEW BUSINESS:

c. CONSIDER APPROVAL OF A REQUEST FROM RUTH SHAW ON BEHALF OF THE HICKORY NUT GORGE CHAMBER OF COMMERCE FOR FOUR ADDITIONAL MUSIC EVENTS

Page 12 - Minutes of the July 14, 2009 Regular Council Meeting

After discussion, Commissioner Noble made a motion to approve the request from Ruth Shaw on behalf of the Hickory Nut Gorge Chamber of Commerce for four additional music events being held at the Morse Park Meadows on June 26th, July 24th, August 21st, and September 4th. Also, waive the rental fees and suspend the peddling ordinance during these events. Commissioner Turner seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

d. CONSIDER APPROVAL OF A REQUEST FROM KEN JORDAN TO HOLD A FRESH LOCAL ART AND PRODUCE MARKET IN LAKE LURE

After discussion, Commissioner Pitts made a motion to approve a request from Ken Jordan to hold a Fresh Local Art and Produce Market in Lake Lure on the Saturday, May 23, 2009 from 8:00 a.m. until 1:00 p.m. and suspend the peddling ordinance for this event. Commissioner Turner seconded the motion and the vote of approval was unanimous.

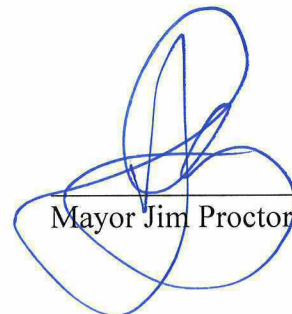
ADJOURN THE MEETING

With no further items of discussion, Commissioner Turner made a motion to adjourn the meeting 8:35 p.m. Commissioner Noble seconded the motion and the vote of approval was unanimous.

ATTEST:



Mary A. Flack, MMC
Town Clerk



Mayor Jim Proctor