

**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL
HELD TUESDAY, OCTOBER 12, 2010, 7:00 P.M. AT THE LAKE LURE MUNICIPAL
CENTER**

PRESENT: Mayor Bob Keith
Commissioner Mary Ann Dotson
Commissioner Wayne Hyatt
Commissioner John W. Moore

Christopher Braund, Town Manager
J. Christopher Callahan, Town Attorney

ABSENT: Commissioner Linda Turner

CALL TO ORDER

Mayor Keith called the meeting to order at 7:00 p.m.

INVOCATION

Attorney Callahan gave the invocation.

APPROVE THE AGENDA

After discussion, Commissioner Moore made a motion to approve the agenda as amended. Adding an item on the agenda under new business as 11c to consider approval of a fabric structure permit for Crystal Melrose. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

**HEARING - APPEAL CIVIL PENALTY FOR NIMBOSTRATUS LLC FOR VIOLATIONS
ON LOT #13, ALLEN DRIVE DRIVE - JOHN CLOUD**

Mayor Keith opened the hearing regarding an appeal of a civil penalty for John Cloud with regards to Nimbostratus LLC for violations on lot #13 at Allen Drive.

John Cloud stated that he would like to appeal the civil fine of \$5,000 for clearing his lake lot #13 at Allen Drive. Mr. Cloud explained that based on information printed in a brochure titled "Tree Protection, as you clear or grade you lot (no development)" furnished by the town, he believed that no permit was needed.

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Mr. Cloud explained how he came to clear the upper sections of his lot without a permit. Mr. Cloud said despite not having the requisite permit, none of the trees removed from the top of the lot were significant trees in size that would have been otherwise protected by a permit. Mr. Cloud said he had a discussion with Environmental Management Officer Clint Calhoun about cutting trees in the trout buffer. Mr. Cloud said Mr. Calhoun informed him that he could not issue him a permit in the trout buffer. Mr. Cloud said it appeared to him that neither a permit was required nor could a permit be issued depending upon the location of the clearing within the lot. Mr. Cloud stated that Mr. Calhoun reminded him that 10% of the trout buffer could be cleared without getting a permit and that Paulownia trees are considered an invasive species and may be cleared out of the trout buffer without a permit. Mr. Cloud said he made a mistake relying on information provided by another person thought to be a reliable source. He said Dale Shields informed him that the prickly locust trees covered in thorns could be considered invasive and that they could be removed from the trout buffer as well as the Paulownia trees. Mr. Cloud said he should have checked on that information with Mr. Calhoun personally.

Mr. Cloud said it appeared to him that by the time the 10% of the trout buffer was deducted, he was allowed to clear without a permit, and the Paulownia trees that he was allowed to cut, he ended up cutting about 11 small stems of locust trees which should have not been cut in the trout buffer. Mr. Cloud said it was necessary that the 11 locust stems be cut in order to be remove what was allowed by the State without a permit. Mr. Cloud stated because of the State regulation, he had been required to prepare and implement a restoration plan at a cost of around \$3,000. Mr. Cloud said this plan has already been implemented, and the plants are already on site. Also, silt fences have been put up as precaution and any bare areas have been seeded.

Mr. Cloud stated that none of the trees cut in the non-trout buffer area were significant trees in size. He said this particular lot has been cleared in the past several times, so that there were few trees of any size on it. Mr. Cloud said he felt it was reasonable to just clear out the new saplings.

Mr. Cloud admitted that he misinterpreted a simple brochure and relied on erroneous information. Mr. Cloud asked Town Council to consider the \$3,000 he spent on restoration costs required by the State to be sufficient financial punishment.

Environmental Management Officer Clint Calhoun read into the record his memorandum dated October 12, 2010 regarding the civil penalty hearing for Nimbostratus LLC regarding violations on lot #13 at Allen Drive. (Copy of Memorandum dated October 12, 2010 from Clint Calhoun is attached.) Mr. Calhoun reported and answered questions regarding the violations that were noted based on an inspection conducted on August 30, 2010 as outlined in his memorandum of October 12, 2010.

After discussion, Commissioner Hyatt made a motion to reduce the one-day initial civil penalty assessed in the amount of \$5,000 to \$500 for Nimbostratus LLC regarding violations on lot #13 at Allen Drive assessed by Environmental Management Officer Clint Calhoun. Commissioner Moore seconded the motion and the vote of approval was unanimous.

HEARING - APPEAL CIVIL PENALTY FOR DALE SHIELDS REGARDING VIOLATIONS ON LOT #13, ALLEN DRIVE DRIVE

Mayor Keith opened the hearing regarding an appeal of a civil penalty for Dale Shields with regards to Nimbostratus LLC for violations on lot #13 at Allen Drive.

Dale Shields stated that he would like to appeal the civil fine of \$5,000 for violations regarding lot #13 at Allen Drive. Mr. Shields said neither he nor his work crew cut tress on lot #13 at Allen Drive. Mr. Shields said they were hired by John Cloud to clean up what had already been cut down by John Cloud. Mr. Cloud agreed with Mr. Shields statement about not cutting the trees on this property.

Environmental Management Officer Clint Calhoun read into the record his memorandum dated October 12, 2010 regarding the civil penalty hearing for Dale Shields violations on lot #13 at Allen Drive.(Copy of Memorandum dated October 12, 2010 from Clint Calhoun is attached.) Mr. Calhoun reported and answered questions regarding the violations that were noted based on an inspection conducted on August 30, 2010 as outlined in his memorandum of October 12, 2010. Mr. Calhoun explained that Mr. Shields was fined as the contractor for Nimbostratus LLC.

After discussion, Commissioner Moore made a motion to dismiss the one-day initial civil penalty assessed in the amount of \$5,000 for Dale Shields regarding violations on lot #13 at Allen Drive assessed by Environmental Management Officer Clint Calhoun. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

Commissioner Dotson complemented Clint Calhoun for a job well done.

Mayor Keith recessed the meeting for a break at 8:00 p.m. and reconvened the meeting at 8:05 p.m.

PUBLIC FORUM

Mayor Keith invited the audience to speak on any non-agenda item and/or consent agenda topics. Werner Maringer informed Council members that he was given a verbal warning by Zoning Administrator Sheila Spicer concerning a violation of the Zoning Regulations, Sections 92.156 (D) prohibiting balloons attached to signs and Section 92.158 (C1 and C2) prohibiting balloons on special event and directory signs. Mr. Maringer asked town council to consider revising these sections of the Zoning Regulations to allow for balloons and make them more flexible. He mentioned that the town has limited staff resources to enforce the zoning regulations.

STAFF REPORTS

Town Manager Christopher Braund read into the record the town manager's report dated October 12, 2010. (Copy of the town manager's report is attached).

Mr. Braund stated that Walker Carriker, Commander of the VFW Post 10473 asked him to present to the town a plaque on their behalf recognizing the town for exceptional service and to extend their sincere appreciation.

COUNCIL LIAISON REPORTS & COMMENTS

Commissioner Moore reported on the activities of the Zoning and Planning Board. He announced that Rick Coley had submitted his resignation as member on the Zoning and Planning Board. Mr. Moore said Town Council will be considering candidates to fill Mr. Coley's position at their next regular council meeting being held on November 9th.

Commissioner Dotson reported on the activities of the Lake Advisory Board and the Lake Lure ABC Board.

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

Mayor Keith reported on the activities of the Parks and Recreation Board.

CONSENT AGENDA

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

Commissioner Moore moved, seconded by Commissioner Dotson, to approve the consent agenda item as presented. Therefore, the consent agenda, incorporating the following item was unanimously approved:

- a. minutes of the September 14, 2010 (regular meeting)

End of Consent Agenda.

UNFINISHED BUSINESS:
A. OTHER UNFINISHED BUSINESS

There was no other unfinished business.

NEW BUSINESS:

A. CONSIDER RECOMMENDATION FROM THE ZONING AND PLANNING BOARD REGARDING SESSION LAW 2010-177 - AN AMENDMENT TO THE 2009 PERMIT EXTENSION ACT

Suzy Smoyer, Planner/Subdivision Administrator read into the record her memorandum dated October 12, 2010 addressed to Town Council pertaining to Session Law 2010-177 (an amendment to the 2009 permit extension act). (Copy of Memorandum dated October 12, 2010 from Suzy Smoyer is attached.)

Mrs. Smoyer stated that the town staff has evaluated the existing subdivision approvals and outlined the state of completion as well as the amendments that have occurred since the original approval of each subdivision. She said at their August 17, 2010 meeting, the Zoning and Planning Board thoroughly reviewed the research and recommended that Town Council not opt out of the extension and take no action. Mrs. Smoyer explained that the Zoning and Planning Board believed that an additional year extension would not have a negative impact on the community and would allow developers sufficient time to complete their projects.

After discussion, Commissioner Moore made a motion to not opt out of the extension and take no action as recommended by the Zoning and Planning Board. Commissioner Dotson seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

B. ADOPT RESOLUTION NO. 10-10-12 AUTHORIZING THE EXECUTION OF TWO QUIT-CLAIM NON-WARRANTY DEEDS TO RESPECTIVE GRANTEEES JAMES WADE LOGAN AND WIFE MARIA P. LOGAN, AND JAMES STEPHEN WALTERS AND WIFE JANET MARSHALL WALTERS AS SUBMITTED BY THE TOWN MANAGER

Town Manager Braund reviewed his memorandum dated September 29, 2010 pertaining to quit-claim non-warranty deeds requests for respective grantees James Wade Logan and wife Maria P. Logan, and James Stephen Walters and wife Janet Marshall Walters. (Copy of memorandum dated September 29, 2010 from Chris Braund is attached.)

After discussion, Commissioner Dotson made a motion to adopt Resolution No. 10-10-12 authorizing the execution of two quit-claim non-warranty deeds to respective grantees James Wade Logan and wife Maria P. Logan, and James Stephen Walters and wife Janet Marshall Walters. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

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RESOLUTION NO. 10-10-12

WHEREAS James Stephen Walters and wife, Janet Marshall Walters are the owners of Lot 15, Plat Book 17, Page 49, Rutherford County Registry; and James Wade Logan is the owner of Lot 14, Plat Book 17, Page 49, Rutherford County Registry;

And whereas both lots are located on the shoreline of Lake Lure, and the original plat described the shoreline as a series of straight lines, and

Whereas over the years sedimentation deposits and erosion have significantly changed the original shoreline; and

Whereas a recent survey has demonstrated certain deficiencies in that the original Lot 15 of record, the property boundary did not follow the lake's edge cutting off a significant shoreline land area used over the years by the lot owner and the town previously having approved a lake structure for a seawall and boardwalk in this area that was technically outside the property boundary (as indicated on the then recorded deed and plat); and Whereas Lot 14 has a natural drainage that has deposited a significant amount of sediment into the lake that has over years become dry land, and whereas this accreted land impacts the property owner's ability to construct lake structures as the lot no longer (of present record) demonstrates a minimum of 100 feet of shoreline;

And whereas the Town of Lake Lure has no use for the newly accreted land at the base of this natural drainage and the property owners have resolved this matter with a new survey to be recorded, a copy of which the Town has on file;

Now therefore, the Board of Commissioners of the Town of Lake Lure hereby resolves to convey by Non Warranty Deed, (1) that tract of 0.04 acres shown on plat entitled *James Walters and Wade Logan*, by Professional Land Surveyors, dated Sept. 1, 2010, to James Stephen Walters and wife, Janet Marshall Walters, and, (2) that tract of 0.02 acres shown on plat entitled *James Walters and Wade Logan*, by Professional Land Surveyors, dated Sept. 1, 2010, to James Wade Logan and wife, Maria P. Logan.

The Mayor and Town Clerk are hereby authorized to execute Non Warranty Deeds for these two tracts to the respective Grantees referenced in this resolution.

This 12th day of October 2010.

ATTEST:

Mary A. Flack, MMC
Town Clerk

Robert Keith
Mayor

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APPROVED AS TO FORM AND CONTENT:

J. Christopher Callahan
Town Attorney

NEW BUSINESS:

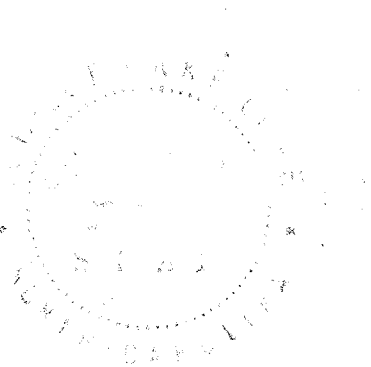
C. CONSIDER APPROVAL OF A FABRIC STRUCTURE PERMIT FOR CRYSTAL MELROSE

After discussion, Commissioner Moore made a motion to approve Crystal Melrose's fabric structure permit for a wedding reception as submitted. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

ADJOURN THE MEETING

With no further items of discussion, Commissioner Moore made a motion to adjourn the meeting. Commissioner Hyatt seconded the motion and the vote of approval was unanimous.

ATTEST:



Mary A. Flack, MMC
Town Clerk

Mayor Bob Keith