

**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL  
HELD TUESDAY, NOVEMBER 15, 2011, 7:00 P.M. AT THE LAKE LURE MUNICIPAL  
CENTER**

**PRESENT:** Mayor Bob Keith  
Commissioner Mary Ann Dotson Silvey  
Commissioner John W. Moore  
Commissioner Linda Turner  
Commissioner Wayne Hyatt

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

**ABSENT:** NA

**CALL TO ORDER**

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

**INVOCATION**

Attorney Chris Callahan gave the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Bob Keith led the pledge of allegiance.

**APPROVE THE AGENDA**

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

**PUBLIC HEARING ORDINANCE NO. 11-11-15 AMENDING THE TOWN CODE OF  
ORDINANCE CHAPTER 84A CONCERNING THE REGULATION OF NOISE**

Mayor Bob Keith opened the public hearing regarding proposed Ordinance No. 11-11-15  
and invited citizens to speak during the public hearing; no one requested to speak.

Council members agreed to leave the public hearing.

<b>CONSIDER ADOPTION ORDINANCE NO. 11-11-15 AMENDING THE TOWN CODE OF ORDINANCES CHAPTER 84A CONCERNING THE REGULATION OF NOISE</b>
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Public notices were duly given and published in the Forest City Daily Courier newspaper.

After discussion, Commissioner Linda Turner made a motion to adopt Ordinance No. 11-11-15 as presented, amending Section 84A of the Code of Ordinances of the Town of Lake Lure regarding the regulation of noise. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

**ORDINANCE NO. 11-11-15**

**AN ORDINANCE TO AMEND CHAPTER 84A OF THE CODE OF ORDINANCES OF THE TOWN OF LAKE LURE PERTAINING TO THE REGULATION OF NOISE**

**WHEREAS**, N.C.G.S. 160A-174 authorizes municipalities to enact ordinances protecting the public health, safety and welfare; and

**WHEREAS**, N.C.G.S. 160A-184 authorizes municipalities to regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens; and

**WHEREAS**, the Lake Lure Town Council finds that the existing noise ordinance (84A) does not fully conform to the Society of Automotive Engineers (SAE) J2825 Surface Vehicle Recommended Practice, Measurement of Exhaust Sound Pressure Levels of Stationary On-Highway Motorcycles; and

**WHEREAS**, the American Motorcyclist Association (AMA) strongly endorses the use of the SAE J2825 testing procedures (without modification); and

**WHEREAS**, the Lake Lure Town Council, after due notice, conducted a public hearing on the 15th day of November, 2011, upon the question of amending the Town Code 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:**

**SECTION ONE.** Chapter 84A of the Code of Ordinances of the Town of Lake Lure, entitled "Noise Regulation", is hereby amended to read as follows:

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

## **CHAPTER 84A: NOISE REGULATION**

### **§ 84A.01 SCOPE.**

This chapter shall apply to all sound, sound vibration, and noise originating within the corporate limits of the Town of Lake Lure. Nothing in this chapter shall be construed to limit or prevent the Town or any person from pursuing any other legal remedies for damages or the abatement of noises in the Town.

### **§ 84A.02 DEFINITIONS.**

The words and phrases defined in this section shall have the meaning indicated when used in this article unless otherwise specifically provided, or unless otherwise clearly required by the context:

*Amplified sound.* Any sound or noise, including the human voice, that is increased in volume or intensity by means of mechanical and / or electrical power.

*Construction.* The erection, repair, assembly, alteration, landscaping, or demolition of any building or building site.

*Decibel (dB).* A unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

*Motorized vehicle.* Any vehicle as defined in G.S. 20-4.01(49) including, but not limited to:

- (1) Excursion passenger vehicles as defined in G.S. 20-4.01(27)a.
- (2) Common carriers of passengers as defined in G.S. 20-4.01(27)c.
- (3) Motorcycles and mopeds as defined in G.S. 20-4.01(27)d. and d.1.
- (4) Truck tractors as defined in G.S. 20-4.01(48).
- (5) Farm tractors as defined in G.S. 20-4.01(11).

*Noise disturbance.* Any sound or noise which:

- (1) Endangers or injures the health or safety of humans or animals;
- (2) Endangers or injures personal or real property; or
- (3) Disturbs a reasonable person of normal sensitivity or interferes with normal human activity.

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Except as otherwise provided herein, for purposes of this ordinance, a sound will be considered a noise disturbance if it exceeds the decibel level thresholds established by zoning district and time of day.

*Person.* Any individual, association, firm, partnership, corporation, or business entity.

*Sound.* Any disturbance of the air or other medium that is detectable by the unaided human ear or which produces vibrations detectable by reasonable persons of normal sensitivity.

*Sound level meter.* An ANSI standard S1.4 Type 0, I or II class instrument which includes a microphone, amplifier, RMS detector, integrator or time average (LEQ as defined below), output meter, and weighting network used to measure sound pressure levels.

#### **§ 84A.03 GENERAL REGULATION.**

Except as allowed in this article, no person shall willfully engage in any activity within the Town, whether on private or public property, which activity produces or constitutes a noise disturbance on occupied neighboring premises or public area.

#### **§ 84A.04 EXCEPTIONS.**

Sound or noise associated with the following are excepted from the application of this article:

- (1) Construction activity performed by an agency of government provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition;
- (2) Construction or repair work and regulated activities of utilities regulated by the North Carolina Utilities Commission;
- (3) Construction activities associated with home improvements between the hours of 7:00 a.m. and 9:00 p.m. Monday through Sunday.
- (4) Lawnmowers and turf management equipment operated between the hours of 6:00 a.m. and 9:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise reducing equipment in place and in proper condition;
- (5) Refuse collection vehicles operating during daylight hours.
- (6) Safety signals, warning devices, emergency pressure relief valves, and church bells.
- (7) Outdoor entertainment events only to the extent authorized in a special event permit issued by the Town.

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- (8) Regularly scheduled athletic events at Town parks, athletic facilities, and public or private schools;
- (9) Film and video production activities for which permits have been issued by the Town; provided all equipment such as generators are properly muffled;
- (10) Lawful fireworks;
- (11) Properly equipped aircraft operated in accordance with applicable federal rules and regulations; and
- (12) Governmental emergency vehicles and firearms in the course of the performance of official duties.

**§ 84A.05 DECIBEL STANDARDS.**

It shall be presumed that a noise disturbance in violation of this Article has occurred whenever any noise or sound is projected from one property in the Town onto another or onto a public area if such sound, measured in accordance with §84.06, below, exceeds the following decibel standards. The zoning classification of the property where the sound originates will be used to determine which standards apply.

- (1) Residential Districts - R-2, R-4, L-1, M-1, S-1 and the various R-1 districts:
  - (a) 7:00 a.m. to 11:00 p.m. – 65 dBA.
  - (b) 11:00 p.m. to 7:00 a.m. – 55 dBA.
- (2) Resort, Commercial and all other zoning districts:
  - (a) 7:00 a.m. to 11:00 p.m. – 65 dBA..
  - (b) 11:00 p.m. to 7:00 a.m. – 55 dBA.

**§ 84A.06 METHOD OF MEASURING DECIBEL STANDARDS.**

Except as qualified by §84.08, below, when measuring vehicular noise, this section describes acceptable methods and techniques for the measurement and reporting of noise for the purpose of determining compliance with the allowable noise levels listed above.

- (1) *Measurement location.* Measurement of sound shall be made at any point beyond (outside) the property line of the property where the noise originates; provided, however, when sound is measured on Town property, the point of measurement shall be at least 50 yards from the property line of the property where the sound originates.

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(2) *Calibration.* All sound level measuring devices shall be calibrated by a certified agency, at a minimum once each year.

(3) *Sound level meter.* Sound level measurement shall be made with a sound level meter using the A-weighting scale, set on "slow" response.

(4) *Use of sound level meters.* Sound level meters shall be at least Type II meeting American National Standard Institute (ANSI S1.4-1983) requirements. Persons using the sound level meters shall be trained in sound level measurement and the operation of sound level measurement equipment.

(5) *Measurement procedures.* The following procedures shall be followed to obtain representative sound level measurements:

(a) Measurement location shall be at least three feet above the ground and not more than ten feet above ground.

(b) Measurement shall be taken with line of sight to the noise source if possible.

(c) Measurements shall be made with the sound level meter set for "A" weighting and "slow" response.

(6) *Data documentation.* A record of all sound level measurements shall be completed and signed by the person making the measurements. The record sheet should include the following:

(a) Date.

(b) Time of measurement.

(c) Location (street address if possible).

(d) Noise source.

(e) Make, model and serial number of sound level meter, date of last certification/calibration.

(f) Field calibration results.

(g) Name of complainant (if provided).

## **§ 84A.07 QUIET HOUR PROHIBITIONS**

In addition to the general prohibition set forth above, the following quiet hours are established that further restrict noise-generating activities in order to support the community's expectation of a quiet sleeping period.

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The following activities are prohibited:

- (1) Construction activities associated with home improvements between the hours of 9:00 p.m. and 7:00 a.m. Monday through Sunday.
- (2) Lawnmowers and turf management equipment operated between the hours of 9:00 p.m. and 6:00 a.m.
- (3) With the exception of construction activities associated with home improvements, which are addressed in paragraph (1), above, the excavation, grading and/or the erection demolition, alteration or repair of any building or other structure within 500 feet of a residential district as established pursuant to the Town zoning ordinance, between the hours of 7:00 p.m. and 7:00 a.m. Monday through Saturday, except by permit from the Town Manager when, in his opinion, such work will not adversely affect other persons. Following the issuance of such a permit, if the Town Manager shall determine that the building operations are adversely affecting others, he shall be authorized to modify or revoke the permit. The Town Manager may permit emergency work in the preservation of public health or safety at any time.
- (4) Operation of outdoor amplified music or public address systems between the hours of 11:00 p.m. and 7:00 a.m.

### **§ 84A.08 VEHICULAR NOISE**

The following shall be prohibited as a public nuisance under this chapter:

- (1) Operation of any motor vehicle so as to cause the tires to squeal or screech unnecessarily.
- ~~(2) — Operation within the Town limits a motorcycle manufactured after 31 December 1982 that is not equipped with an exhaust muffler bearing the Federal EPA required labeling compliance applicable to the motorcycle's model year, as set out in the Code of Federal Regulations.~~
- (3) Operation within the Town limits any type of motor vehicle that exceeds a measured noise level of ~~89~~ 92 decibels on the sound meter when measured 20 inches from the exhaust pipe at a 45-degree angle while the engine is operating at idle.
- (4) Operation of any motor vehicle of any size and regardless of the year of manufacture that meets one or more of the following criteria:
  - (a) It is not equipped with an adequate muffler in constant operation, free of defects and modifications, that prevents the escape of any excessive or unusual noise;

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(b) It has a muffler system that is equipped with a straight pipe exhaust system (regardless of the presence of baffles);

(c) It has a hollow core muffler;

(d) It has a muffler that is labeled for off-road course competition use:

(e) It has a muffler system that has a cut-out, bypass, or similar device designed or so installed so that it can be used continually or intermittently to bypass or otherwise reduce or eliminate the effectiveness of a muffler or muffler system;

(f) It has a muffler system that has been modified in a manner which will amplify or increase the noise emitted by the exhaust.

(5) Operation of any motor vehicle within the city limits so as to make any loud or unnecessary noise that results from any one or more of the following actions by the operator:

(a) Misuse of acceleration or braking power that exceeds tire traction limits, sometimes known as "burn-outs", "burning rubber", "laying down rubber" or "peeling rubber".

(b) Excessive acceleration or deceleration while in motion where there is no emergency need.

(c) Racing or revving of engines by manipulation of the accelerator, gas pedal, or carburetor in applying fuel to the engine in a greater amount than is necessary whether the vehicle is either in motion or standing still.

(d) Use of an engine braking system which is in any way activated or operated by the compression of the engine of any motor vehicle or any part thereof, except in cases of emergency for the protection of persons and / or property. Such braking systems are commonly referred as "compression brakes" or "jake brakes".

### **84A.09 ANIMAL NOISES**

Animal noises, may constitute a noise disturbance even though they do not exceed the decibel levels established in §84.05, above. Accordingly, the keeping of any dog which by prolonged or habitual barking, howling or whining or any other animal that frequently or for long periods of time makes noises which disturb the comfort or repose of any persons in the vicinity shall constitute a noise disturbance.

### **§ 84A.10 NON-EXCLUSIVITY.**



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Nothing in this article shall be construed to prevent or limit any person from seeking any remedy available in law or equity for activities that are or may be subject to regulation by this chapter, or from pursuing said remedy simultaneously with proceedings under this chapter, nor shall any of the procedures specified herein be a condition precedent to the initiation of any legal action.

**§84A.11 ENFORCEMENT.**

(A) Violations of the provisions of this article shall be subject to the criminal and civil penalties set forth in § 10.99 of this Code. In addition to the penalties set forth therein, second or subsequent violations of the provisions of this article by the same person for the same activity occurring within one year of the first such violation shall be subject to civil penalties as follows:

First violation (per Town Code § 10.99). . . . .	\$50.00.
Second violation . . . . .	100.00.
Third violation . . . . .	200.00.
Fourth or subsequent violation, per offense . . . . .	300.00.

(B) In addition to the penalties provided for above, the Town may enforce the provisions of this Chapter by appropriate equitable remedies.

(C) This article may be enforced by the Town of Lake Lure Police Department and by other employees of the Town as designated by the Town Manager. Employees of an animal control agency working under contract with the Town for the enforcement of animal control ordinances and who have been designated by the Chief of Police may enforce the provisions of this article relating to animals and animal noises.

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

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

Adopted this 15<sup>th</sup> day of November, 2011.

<b>PUBLIC FORUM</b>
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Mayor Keith invited the audience to speak on any non-agenda items and/or consent agenda topics and the following requested to speak.

1. Michael Gray of 111 Havaners Point Circle expressed his concerns about the amount of money that has been spent on the vacation rental issue and the amount of money that will be spent in appealing Rutherford County Court's decision regarding three vacation rental cases and requested that the town withdraw their appeal of Judge Bridges' decision.
2. John Kilby of 164 Neighborly Dr questioned whether information in a document prepared by the mayor and town staff is the town's position on vacation rentals and challenged some facts in the document. Mr. Kilby stated that if this is the town's position it should be approved by council. Mr. Kilby said he is part of the 183 property owners that complied with the Vacation Rental Ordinance, but that didn't mean he agrees with the ordinance.
3. Patricia Maringer of 1491 Memorial Highway asked council and the audience to remember why the ordinance was put in place to begin with. Mrs. Maringer questioned whether anyone was concerned about their neighbors and stated that the reason the ordinance is in effect is because of past complaints.

### **PUBLIC FORUM AND DISCUSSION REGARDING LAKE LURE GOLF COURSE**

Town Manager Chris Braund reported that the town is trying to get the word out to kick off community discussion about the municipal golf course. Due to the declining economy, particularly the golf industry, Course Doctors business is failing and they are leaving the golf business. Course Doctors have asked to be let out of their lease with the Town of Lake Lure.

Mr. Braund commended Course Doctors' work at the Lake Lure course and presented two questions to the community. First, how soon the town should let Course Doctors out of the lease. And second, what do citizens want to do with the golf course? Should the town invest each year to have someone operate the golf course or repurpose the property?

Mayor Keith asked if anyone would like to speak on the topic and stated that the town is interested in hearing further comment from the public regarding the golf course at a later date. No one requested to speak.

### **STAFF REPORTS**

Town Manager Chris Braund presented the town manager's report dated November 15, 2011. (Copy of the town manager's report is attached)

<b>COUNCIL LIAISON REPORTS &amp; COMMENTS</b>
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Commissioner Linda Turner reported on the activities of the Parks and Recreation Board.

Commissioner John Moore reported on the activities of the Zoning/Planning Board.

Commissioner Mary Ann Silvey reported on the activities of the Lake Advisory Board and the activities of the Lake Lure ABC Board.

Commissioner Wayne Hyatt reported that since there were no cases for Lake Lure Board of Adjustment/Lake Structures Appeal Board, he had no report.

Mayor Keith recessed the meeting for a break at 8:20 p.m. and reconvened the meeting at 8:35 p.m.

<b>CONSENT AGENDA</b>
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Mayor Bob Keith presented the consent agenda and asked if any items should be removed before calling for action.

Commissioner Linda Turner moved, seconded by Commissioner Mary Ann Silvey, 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 11, 2011 regular meeting and the October 19, 2011 Special Meeting and Closed Session;
- b. a request from Mary Ann Ransom on behalf of Hickory Nut Gorge Outreach to suspend the town's peddling ordinance to hold a rummage sale on Saturday, December 3, 2011 in the Parking Lot of the Hickory Nut Gorge Outreach office;
- c. a budget amendment regarding a Facebook grant received by the Lake Lure Fire Department to add \$10,000 to revenue line item Facebook Grant-Fire Dept. (#10-383320 and increase \$10,000 to Expense Capital Outlay Fire Department Computer Aid Dispatch (#10-80000.529);
- d. a request from Mayor Bob Keith to direct the Zoning and Planning Board to review the Town's Zoning Regulations to address special events and propose an amendment for council's consideration as outlined in memo dated November 2, 2011 (Copy of memo is attached); and

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- e. capitol project Ordinance No. 11-11-15A regarding the Washburn Marina slip renovation and construction

**ORDINANCE NUMBER 11-11-15A**

**CAPITAL PROJECT ORDINANCE  
OF THE TOWN OF LAKE LURE TOWN COUNCIL**

BE IT ORDAINED by the Governing Board of the Town of Lake Lure, which, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is the Washburn Marina slip renovation and construction to be financed with a 10 year installment financing agreement with Branch Banking & Trust.

Section 2. The officers of the Town of Lake Lure are hereby directed to proceed with the capital project within the terms of the council's resolution, loan documents and the budget contained herein.

Section 3. The following amounts were appropriated for the project:

Debt Issuance Costs	\$ 3,000	
Permits and Engineering	10,425	
Demolition	26,015	
Dredging, Shoreline Stabilization & Walkway		43,960
Construction – Seawall, Docks & Fuel Tank	379,170	
Landscaping	10,000	
Equipment/Fixtures	18,000	
Contingency	159,430	
<b>Total</b>	<b>\$ 650,000</b>	

Section 4. The following revenues are available for this project:

<u>Installment Purchase Proceeds</u>	<u>\$ 650,000</u>
<b>Total</b>	<b>\$ 650,000</b>

Section 5. The Finance Officer is hereby directed to maintain within the Capital Project Fund sufficient detailed accounting records related to the project.

Section 6. The Town Council acknowledges that this project has been approved by the LGC. The finance officer is directed to report, on at a quarterly basis, on the financial status of each project element in section 3.

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Section 7. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this capital project in every budget submission made to this board.

Section 8. Copies of this capital project ordinance shall be furnished to the Clerk to Town Council, and to the Budget Officer and the Finance Officer for direction in carrying out this project.

Adopted and approved by vote of (for 4) (against 0) this the 15<sup>th</sup> day of November 2011.

**End of Consent Agenda.**

**UNFINISHED BUSINESS:**

**a. HEARING – CONSIDER A MOTION FROM ATTORNEY T. EUGENE MITCHELL ON BEHALF OF TIM FISK TO SET ASIDE THE LAKE STRUCTURE APPEALS BOARD’S JULY 26, 2011 DECISION REGARDING CASE NO. LSA-2010003 AND REINSTATE THEIR ORIGINAL DECISION FROM MAY 25, 2010 & CONSIDER A MOTION FROM ATTORNEY T. EUGENE MITCHELL ON BEHALF OF TIM FISK THE DECISION OF THE LAKE STRUCTURE APPEALS BOARD CASE NO. LSA-2010003**

Attorney Craig Justus, representing Mr. Fisk and Ms. Smallwood, reported that since the last continuance attempts between the parties involved to work out a settlement had been unsuccessful. Mr. Justus requested a continuance of the hearing and explained that since the last hearing his client had submitted to the town a permit to modify the boathouse structure to comply with the town’s current ordinance. Mr. Justus stated that if the permit is approved it would moot the point of a variance and request that he be allowed to show the board plans that were submitted with the permit application.

Patsy Brison objected to Mr. Justus showing the plans to town council and stated that the introduction of any new evidence should not be permitted during a hearing on the record.

Attorney Chris Callahan suggested that Mr. Justus simply explain his motion to continue rather than provide town council the plans referenced.

Mr. Justus explained that he had two reasons for asking for continuance. First, if the new permit is granted they would be in compliance and the variance would not be necessary. Secondly, Mr. Justus argued that if the permit is granted or denied additional appeals would likely result from the town’s decision and continuing the hearing would allow time for the permit

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to be granted or denied and any additional appeals resulting from that decision could be heard along with the current motion.

Ms. Brison stated that her clients had driven from Charleston, South Carolina for the hearing and that they had not seen the application submitted prior to the hearing. Ms. Brison reviewed the history of the case and requested that the board deny Mr. Justus' request for a continuance.

After discussion, Commissioner John Moore made a motion to continue the hearing until the December, 2011 town council meeting. Commissioner Wayne Hyatt seconded the motion and the vote of approval was unanimous.

**NEW BUSINESS:**

**b. CONSIDER A REQUEST FROM TOM AND CAROL NEUMANN ASKING THE TOWN FOR ASSISTANCE IN REMOVING A LARGE TREE FROM PRIVATE PROPERTY ALONG THE SOUTH SIDE OF MISTLETOE PARK LANE**

After discussion, Commissioner John Moore made a motion that the town provide up to \$350 to assist in removing a tree that has fallen along the south side of Mistletoe Park Lane, provided the contractor hired to do the work has insurance to cover the job. No one seconded the motion; therefore the motion did not carry.

**UNFINISHED BUSINESS:**

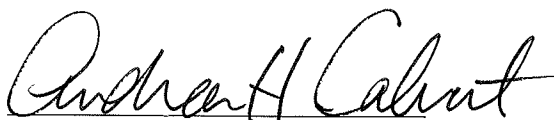
**c. OTHER UNFINISHED BUSINESS**

There was no other unfinished business.


**ADJOURN THE MEETING**

With no further items of discussion, Commissioner Linda Turner made a motion to adjourn this meeting at 9:10 p.m. Commissioner Wayne Hyatt seconded the motion and the vote of approval was unanimous.

ATTEST:



Andrea H. Calvert  
Town Clerk

  
Mayor Bob Keith