

**MINUTES OF THE SPECIAL MEETING OF THE LAKE LURE TOWN COUNCIL
HELD TUESDAY, FEBRUARY 28, 2012, 7:00 P.M. AT THE LAKE LURE MUNICIPAL
CENTER**

PRESENT: Mayor Bob Keith
Commissioner Mary Ann Silvey
Commissioner John W. Moore
Commissioner Bob Cameron
Commissioner Diane Barrett (via phone conference)

Community Development Director Shannon Baldwin

J. Christopher Callahan, Town Attorney
Michael Egan, Community Development Attorney

ABSENT: Christopher Braund, Town Manager

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 John Moore asked to add consideration of approval of a settlement agreement as item 8 on the agenda.

Commissioner Diane Barrett made a motion to approve the agenda as amended, adding consideration of approval of a settlement agreement as item 8 on the agenda. Commissioner John Moore seconded the motion and the vote of approval was unanimous.

PUBLIC HEARING RESOLUTION NO. 12-02-28 AMENDING POLICY LU-1-2.3 OF THE 2007-2027 TOWN OF LAKE LURE COMPREHENSIVE PLAN; RESCINDING THE AMENDMENT ADOPTED NOVEMBER 10, 2009 PER RESOLUTION NO. 09-11-
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**10 AND REESTABLISHING THE ORIGINAL LANGUAGE RELATIVE TO
VACATION RENTALS IN SAID PLAN**

Mayor Bob Keith opened the public hearing regarding proposed Ordinance No. 12-02-28.

No one requested to speak.

Commissioner John Moore made a motion to leave the public hearing. Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

**CONSIDER ADOPTION OF RESOLUTION NO. 12-02-28 AMENDING POLICY LU-1-
2.3 OF THE 2007-2027 TOWN OF LAKE LURE COMPREHENSIVE PLAN;
RESCINDING THE AMENDMENT ADOPTED NOVEMBER 10, 2009 PER
RESOLUTION NO. 09-11-10 AND REESTABLISHING THE ORIGINAL LANGUAGE
RELATIVE TO VACATION RENTALS IN SAID PLAN**

Public notice was duly given and published in the Forest City Daily Courier newspaper.

After discussion, Commissioner Diane Barrett made a motion to adopt Resolution No. 12-02-28 amending policy LU-1-2.3 of the 2007-2027 Town of Lake Lure Comprehensive Plan; rescinding the amendment adopted November 10, 2009 per Resolution No. 09-11-10 and reestablishing the original language relative to vacation rentals in said plan. Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

RESOLUTION NUMBER 12-02-28

A RESOLUTION AMENDING POLICY LU-1-2.3 OF THE 2007-2027 TOWN OF LAKE LURE COMPREHENSIVE PLAN; RESCINDING THE AMENDMENT ADOPTED 10 NOVEMBER 2009 PER RESOLUTION NO. 09-11-10 AND REESTABLISHING THE ORIGINAL LANGUAGE RELATIVE TO VACATION RENTALS IN SAID PLAN

WHEREAS, Policy LU-1-2.3 of the 2007-2027 Town of Lake Lure Comprehensive Plan called for the study of the impacts of vacation rentals and the adoption of controls for such uses; and

WHEREAS, pursuant to said Policy, the Town of Lake Lure appointed a Stakeholders' Committee to study the impacts of residential vacation rentals and to make recommendations regarding the regulations of such uses; and

WHEREAS, the Report of the Stakeholders' Committee was completed and published; and

WHEREAS, Town Council instituted a regulatory program for residential vacation rentals and studied the effects of that program (RVR Annual Assessment 2010); and

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WHEREAS, Town Council amended the aforementioned Comprehensive Plan in 2009 and adopted regulations to provide additional guidance regarding the regulation of vacation rentals.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Board of Commissioners of the Town of Lake Lure that Policy LU-1-2.3 of the 2007-2027 Town of Lake Lure Comprehensive Plan is amended to reflect the original language and will now read as follows:

Policy LU-1-2.3: Study the impacts (e.g. economic, quality of life, etc.) of vacation rentals, particularly those along the lakefront, to determine the need for controls (e.g. additional regulations) or other measures to ensure that the value and enjoyment of all lakefront properties are maintained, and adopt controls for vacation rentals as determined by study recommendations. ~~Once regulatory controls have been in place, the Town should then study the effects of those controls and of the impacts of residential vacation rentals on single-family residential zoning districts. Should those studies indicate that the objectives of the regulatory controls are not being achieved, it is the desire of Council and the intent of the Comprehensive Plan that future ordinance(s) be enacted to further regulate and, if necessary, prohibit residential vacation rentals in the R-1, R-1A, R1B, R-1C, R-1D, R-2, and M-1 zoning districts and to amortize them in such districts for an appropriate period of time.~~

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

ADOPTED the 28th day of February, 2012.

<p>PUBLIC HEARING ORDINANCE NO. 12-02-28 AMENDING SECTION 92.042 OF THE ZONING REGULATIONS OF THE TOWN OF LAKE LURE REGARDING THE USE OF RESIDENCES AS VACATION RENTALS</p>
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Mayor Bob Keith opened the public hearing regarding proposed Ordinance No. 12-02-28 and invited the audience to speak.

Bill Haymond of 111 Jack London Court thanked town council for their hard work and consideration in regard to the vacation rental ordinance.

Mayor Bob Keith read emails sent to him by Diane Watson, Dave Matthews, Peter DeSantis, Sharon Ryan, Ryan & Heather Curtis, Mary Potter asking town council to settle. Mayor Keith also read exerts from email sent to him by Martyn Watts expressing his concerns about fire safety with regard to the revised vacation rental ordinance.

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Commissioner Bob Cameron made a motion to leave the public hearing. Commissioner John Moore seconded the motion and the vote of approval was unanimous.

<p>CONSIDER ADOPTION OF ORDINANCE NO. 12-02-28 AMENDING SECTION 92.042 OF THE ZONING REGULATIONS OF THE TOWN OF LAKE LURE REGARDING THE USE OF RESIDENCES AS VACATION RENTALS</p>
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Public notices were duly given and published in the Forest City Daily Courier newspaper.

Commissioner Diane Barrett read into the record a list of points that she created based on her research and findings. (Copy of points of fact from Commissioner Diane Barrett attached.)

After discussion, Commissioner Bob Cameron made a motion to adopt Ordinance No. 12-02-28 amending §92.042 of the Zoning Regulations of the Town of Lake Lure regulating the use of residences as vacation rentals. Commissioner Diane Barrett seconded the motion. Commissioner John Moore, Commissioner Diane Barrett, and Commissioner Bob Cameron voted in favor of the motion and Commissioner Mary Ann Silvey opposed. Therefore, the motion carried with a vote of 3 to 1.

ORDINANCE NUMBER 12-02-28

**AN ORDINANCE AMENDING THE ZONING
REGULATIONS OF THE TOWN OF LAKE
LURE; AMENDING §92.042 REGULATING
THE USE OF RESIDENCES AS VACATION
RENTALS**

WHEREAS, N.C.G.S. 160A-381 authorizes municipalities to adopt zoning ordinances regulating, among other things, “the location and use of buildings, structures, and land”; and

WHEREAS, N.C.G.S. 160A-174 authorizes municipalities to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city; and

WHEREAS, by means of Ordinance Number 09-10-01, the Lake Lure Town Council created §92.042 of the Town’s Zoning Regulations which put in place regulatory requirements for residential vacation rentals, as defined therein; and

WHEREAS, said Ordinance Number 09-10-01 stated that one of its purposes was “to provide an opportunity for the Town to study the effects of the regulatory provisions of this Ordinance with regard to the potential problems associated with residential vacation rentals”; and

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WHEREAS, the Town now has more than two years of experience administering Ordinance Number 09-10-01, and such experience indicates that a number of the restrictions contained in Ordinance Number 09-10-01 are not necessary to address the concerns articulated therein; and

WHEREAS, Town Council finds that this Ordinance Amending the Residential Vacation Rental Ordinance, by eliminating certain unnecessary regulations, furthers the public interest by doing away with impediments to the free use of private property; and

WHEREAS, Town Council further finds that this Ordinance Amending the Residential Vacation Rental Ordinance is, for the reasons stated in Ordinance Number 09-10-01, consistent with the 2007-2027 Town of Lake Lure Comprehensive Plan; and

WHEREAS, the Zoning and Planning Board has recommended certain modifications to the Zoning Regulations of the Town of Lake Lure as noted in the title of this ordinance; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 28th day of February, 2012, upon the question of amending the Zoning 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:

SECTION ONE. *Authority; Title.* This ordinance is enacted pursuant to the grants of authority contained in Sections 160A-174 and 160A-381 of the North Carolina General Statutes. It shall be known and may be referred to as the Ordinance Amending the Residential Vacation Rental Ordinance.

SECTION TWO. Section 92.042 of the Zoning Regulations of the Town of Lake Lure, entitled “Residential Vacation Rentals”, is hereby amended as follows:

§92.042 Residential Vacation Rentals.

- (A) ***Use Recognized;—Vacation Rental Operating Permit Required.*** Residential vacation rentals are hereby recognized as a use within the planning jurisdiction of the Town of Lake Lure. Except as provided herein, on and after 1 January 2010, it shall be a violation of these Zoning Regulations to operate a residential vacation rental without a vacation rental operating permit from the Town.
- (B) ***Exceptions.*** The following activities and / or uses shall not be deemed residential vacation rentals and the requirements of this section shall not apply to them.

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- (1) Incidental residential vacation rentals, defined to mean no more than two such rentals in any calendar year where the total annual rental period for both rentals does not exceed two weeks.
 - (2) Rentals of property in any hotel, lodge, motel, bed & breakfast establishment, or boarding & rooming house, with a valid certificate of zoning compliance.
 - ~~(3) Rentals of a dwelling unit in a duplex only when the owner of the duplex resides in the other dwelling unit in that duplex.~~
- (C) ***Vacation Rental Operating Permits.*** Every residential vacation rental not excepted as above shall require a vacation rental operating permit issued pursuant to the regulations contained herein. The vacation rental operating permit may also function as a certificate of zoning compliance for a residential vacation rental.

Any Vacation Rental Operating Permit issued prior to 28 February 2012 is recognized as having a vested status to operate under the ordinance as amended on 28 February 2012. Additionally, anyone that can establish via Tourism and Development Authority tax records or other suitable proof that they were engaged in vacation rental activity at their home prior to January 1, 2010 (the effective date of the ordinance) would also have vested status. Any future revisions and amendments to this Ordinance shall not apply to those vested residences. This status is transferable; although, a new vacation rental operating permit must be obtained in the name of the new owner. This status is forfeited if there is no vacation rental activity at the home for a period of five years.

- (1) ***Application.*** In order to obtain a vacation rental operating permit the owner or the operator shall submit an application for each such residential vacation rental which complies with the requirements of §92.042(D), below, and shall pay all applicable fees in accordance with the Town's adopted fee schedule.
- (2) ***Procedure.*** From and after the effective date of this Ordinance, applications for a vacation rental operating permit shall be deemed in the nature of a conditional use permit and shall be processed in accordance with §92.046 of these Zoning Regulations except that no sketch plan conference shall be necessary.
- ~~(2) ***Decision of the Zoning Administrator.*** The Zoning Administrator shall review the application along with the report of the permit inspection, if any, and other pertinent information. The Administrator shall issue a permit upon determining that the application and supporting information demonstrate compliance with the requirements of this section and other applicable provisions of these Zoning Regulations and the Town Code of Ordinances and all other applicable regulations. If compliance with such provisions is not demonstrated, the Administrator shall deny the application in writing, stating therein the grounds for denial. The decision of the Administrator may be appealed to the Board of~~

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~~Adjustment pursuant to § 92.086 of these Zoning Regulations by any party with standing.~~

- ~~(3) *Administration of Vacation Rental Operating Permits.* In administering this section, the Zoning Administrator shall have all the remedies and enforcement provisions contained in Article 13 of these Zoning Regulations, and, in addition thereto, shall have the power to suspend vacation rental operating permits.~~

~~If a neighboring property owner has filed a formal, written complaint with the Zoning Administrator alleging a substantive violation of the regulations contained in this section, the Zoning Administrator shall serve a copy of his or her written decision on such neighboring property owner in the same manner as is done to the operator of the residential vacation rental. The operator and any such property owner(s) shall have standing to appeal the Zoning Administrator's decision to the Board of Adjustment pursuant to §92.086 of these Zoning Regulations.~~

- ~~(4) *Appeals.* The Zoning Administrator shall provide notice of the hearing at which the Board of Adjustment will take up an administrative appeal to the residential vacation rental operator and to anyone else who has requested such in writing. Appeals shall be conducted in accordance with the provisions contained in §92.086 of the Zoning Regulations with the proviso that the residential vacation rental operator may elect to offer evidence of remedial steps taken or proposed to be taken to provide assurance of future compliance with this section. If the operator demonstrates that the cause(s) for any regulatory violations have been satisfactorily addressed and are not likely to reoccur, the Board of Adjustment may fashion an appropriate remedy and in doing so shall evaluate the impacts of the residential vacation rental on the particular neighborhood in which it is located and shall have full power to impose conditions on the operation of such residential vacation rental.~~

- (D) ***Contents of Application.*** The application for a vacation rental operating permit shall contain the following information. ~~The application shall be signed and sworn to by the operator.~~

- (1) The address of the property.
- (2) Name and contact information for the owner of the property.
- (3) Name and contact information for the operator if other than the owner.
- (4) A site plan showing the off-street parking area(s) for the property.
- (5) The number of bedrooms on the property intended to be used for occupancy.

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- ~~(6) If the property is served by a septic system, a statement attesting to the adequacy of the system to accommodate the number of bedrooms intended for occupancy pursuant to these regulations. This shall be satisfied by providing a copy of the septic permit issued by County Health Department for the property. In such event, the number of bedrooms listed on the County Health Department permit shall determine the occupancy limits established by Paragraph (I)(1), below. If no such permit exists, the applicant shall provide a statement from a qualified licensed professional attesting to the adequacy of the system to accommodate the maximum number of guests permissible under these regulations or provide evidence that the septic system has been pumped out within one year prior to the date of application.~~
- (6) If the property is served by the Town's sewer system, a certificate from a qualified licensed professional that the connection to the Town's system is operational and free of detectable leaks.
- (7) If the residential vacation rental includes the use of a boat on Lake Lure, proof of a valid Town commercial boat license.
- (8) Proof that the property is registered with the Rutherford County Tourism Development Authority or, for a new business, that an application has been submitted, and that all room occupancy and tourism development taxes for the prior year have been paid.
- ~~(10) Certification that the property complies with the Fire Code as adopted by Rutherford County.~~
- (9) A copy of the standard rental agreement used for the residential vacation rental which contains information required by this section.
- ~~(12) Such other information reasonably needed for the Town to make an informed decision on the application.~~
- (10) An acknowledgment that the applicant is aware of the occupancy restrictions on the use of the property as a residential vacation rental and the applicant's agreement to abide thereby.
- (11) A statement by the operator, under oath, that the information in the application is correct.
- (E) **Inspections.** In conjunction with an application for a vacation rental operating permit, the Town shall conduct an initial inspection to confirm compliance with the requirements of this section.
- (F) **Operational Requirements.** The following operational requirements shall apply to all residential vacation rentals.

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- (1) *Occupancy Limits.* On those occasions when the property is being utilized for vacation rental activity, the overnight occupancy in a residential vacation rental property shall not exceed two persons per bedroom plus two four additional persons. For any permits issued subsequent to 28 February 2012, in the R-1, R-1A, R-1B, R-1C, R-1D, and M-1 Zoning Districts, occupancy shall be the lesser of the total determined by the foregoing formula or twelve persons. Occupancy shall refer to the number of persons on the premises between the hours of 12:00 midnight and 6:00 a.m. Bedrooms used in calculating occupancy limits shall be taken from the application as affirmed by the owner/manager. include only those that meet the definitions and standards for habitable bedrooms in the State Building Code.
- (2) *Signs.* In the R-1, R-1A, R-1B, R-1C, R-1D and M-1 zoning districts, residential vacation rental properties shall not have any signs visible from the exterior of the premises which advertise the use of the property as a residential vacation rental, other than as required by this section. In the remaining zoning districts, residential vacation rental properties may have signage as authorized by Article 10 of these regulations.
- ~~(3) *Posting Permit.* Each operator shall affix and maintain a copy of its vacation rental operating permit on the inside of the main entry door of the property to which it applies.~~
- (3) *Display of Contact Information.* Residential vacation rental operators shall prominently display on the exterior of the residential vacation rental property the name and 24-hour per day, 365 days-per-year telephone number for the residential vacation rental operator who will take and resolve complaints regarding operation of the residential vacation rental property and its occupants and guests. The Town will prescribe the form of this display which shall also include a telephone number to report violations of this section to the Zoning Administrator.
- (4) *Parking.* Occupants or guests of any residential vacation rental property shall not park vehicles on the property other than within parking area(s) designated on the application for the residential vacation rental. Vehicles parked in undesignated areas, or in the street so as to violate the town's street ordinances, shall be subject to towing at the vehicle owner's expense.
- (5) *Trash Disposal.* Household trash must be bagged and disposed of in trash receptacles. Trash receptacles shall be the size and number authorized by existing refuse contracts and shall be animal-proof resistant, and placed in an enclosed area.
- ~~(7) *Conduct of Occupants & Guests.* Occupants and guests shall conduct themselves in accordance with provisions of this section, the Town Code or any other~~

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~~applicable federal, state, or county statute, ordinance, rule or regulation pertaining to nuisance, noise, disorderly conduct, trespass, illegal consumption of alcohol, or use of illegal drugs.~~

(G) ***Contract Addendum.*** Every residential vacation rental contract shall contain an addendum, in a form prepared by the Town, setting forth the requirements of this section and other applicable provisions of law. The operator shall obtain a signed acknowledgment from the renter(s) that they have received such addendum prior to delivering possession of the residential vacation rental property. This requirement shall be deemed satisfied if the provisions of the addendum are included as part of the rental contract.

(H) ***Duties of the Operator to Respond to Complaints.*** To assure prompt response to complaints and issues concerning a residential vacation rental, the operator shall comply with the following:

(1) Maintain a call center that is staffed by a live person and fully responsive 24 hours per day, 365 days per year at any time that the property is used as a Residential Vacation Rental.

~~— (2) Cause a responsible party with decision-making authority to be on-site at the residential vacation rental property within one hour after receipt of a complaint requiring the operator's on-site presence.~~

(2) Continuously maintain on file with the Town the operator's current address, telephone number, and facsimile number and/or email address.

~~(4) Ensure that the occupants and guests of its residential vacation rental property do not violate provisions of this Section, the Town Code or any other applicable federal, state, or county statute, ordinance, rule or regulation pertaining to noise, disorderly conduct, trespass, illegal consumption of alcohol, or use of illegal drugs. An operator shall be deemed to have satisfied this standard if it (1) clearly advises its occupants and guests of such requirements before they take occupancy of the property, (2) promptly and appropriately responds to complaints concerning the behavior of its occupants and guests, and (3) promptly evicts from the residential vacation rental property any who have failed to comply with any such applicable laws on two or more occasions during their period of occupancy.~~

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

SECTION THREE. In administering this Ordinance, the Town shall have all the remedies and enforcement powers contained in Article 13 of the Zoning Regulations, as supplemented herein, and as provided by the General Statutes.

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

SECTION FIVE. 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 SIX. 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 SEVEN. This ordinance shall be in full force and effect from and after the date of enactment.

Adopted this 28th day of February, 2012.

CONSIDER APPROVAL OF SETTLEMENT AGREEMENT
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Commissioner Bob Cameron made a motion to accept the settlement agreement memorandum of understand mutual release made and entered into February 28, 2012 by the Town of Lake Lure and Stephen G. Duncan, Deborah O. McArthur, and Martha C. Jones, trustee of the Marth B. Cecil Generation Skipping Trust dated 1/19/98 F/B/O Martha Jones, and Lou C. Self, trustee of the Martha B. Cecil Generation Skipping Trust dated 1/19/98F/B/O Lou C. Self. Commissioner John Moore seconded the motion. Commissioner Bob Cameron, Commissioner Diane Barrett, and Commissioner John Moore voted in favor of the motion. Commissioner Mary Ann Silvey opposed. Therefore, the motion carried with a vote of 3 to 1.

ADJOURNED THE MEETING

Commissioner Bob Cameron made a motion to adjourn the meeting at 7:20 p.m. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

ATTEST:

Andrea H. Calvert
Town Clerk

Mayor Bob Keith