

**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL
HELD TUESDAY, MARCH 13, 2012, 7:00 P.M. AT THE LAKE LURE MUNICIPAL
CENTER**

PRESENT: Mayor Pro Tem John W. Moore
Commissioner Mary Ann Silvey
Commissioner Bob Cameron
Commissioner Diane Barrett

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

ABSENT: Mayor Bob Keith

CALL TO ORDER

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

INVOCATION

Attorney Chris Callahan gave the invocation.

PLEDGE OF ALLEGIANCE

Council members led the pledge of allegiance.

APPROVE THE AGENDA

Commissioner Diane Barrett made a motion to approve the agenda as amended adding the following items under new business:

- 13a Discussion Regarding Procedure Related to the New Vacation Rental Ordinance
- 13b Budget Discussion
- 13c Discussion Regarding the Definition of “Marina”

Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

**CONSIDER ADOPTION OF ORDINANCE NO. 12-02-14 AMENDING SECTION 10.99
OF THE GENERAL PROVISIONS OF THE TOWN OF LAKE LURE CODE OF**

ORDINANCES PERTAINING TO ENFORCEMENT OF ORDINANCES AND CONTINUING VIOLATIONS

Public notices were duly published in the Daily Courier newspaper and a public hearing regarding proposed Ordinance No. 12-02-14 was held on February 14, 2012 at the regular town council meeting.

After discussion, Commissioner Diane Barrett made a motion to adopt Ordinance No. 12-02-14 as presented. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 12-02-14

AN ORDINANCE CONCERNING THE ENFORCEMENT OF THE CODE OF ORDINANCES OF THE TOWN OF LAKE LURE; AMENDING SECTION 10.99 THEREOF

WHEREAS, Article 8 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-174, et seq., delegates to municipalities the authority to exercise the general police power; and

WHEREAS, the Lake Lure Town Council finds that it is in the public interest to amend Section 10.99 of the Town's Code of Ordinances to provide more specificity as to the methods for enforcing such ordinances; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 14th day of February 2012, 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. Subject to the caveat stated herein, Section 10.99 of the Code of Ordinances of the Town of Lake Lure, entitled "Penalty", is hereby repealed and replaced with a new Section 10.99 entitled, "Enforcement". To the extent that the provisions of this section are the same in substance as the previously adopted provisions they replace, they shall be considered as continuations thereof and not as new enactments. Particularly, the enactment of this Ordinance shall in no way affect be deemed to render null or impair in any way any existing enforcement actions or existing violations of the Code of Ordinances.

SECTION TWO. Section 10.99 of the Code of Ordinances of the Town of Lake Lure, entitled "Enforcement", is hereby enacted to read as follows:

§ 10.99 ENFORCEMENT

(A) Administration.

(1) Unless a greater amount is specified herein, an act constituting a violation of the provisions of this Code or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$100.00, which includes administrative fees. Each day any single violation continues shall be a separate violation. Unless expressly stated otherwise in a chapter or appendix, a violation of this Code shall not constitute a misdemeanor pursuant to N.C.G.S. 14-4. If the offender fails to correct this violation within ten days after being notified of said violation, the penalty may be recovered in a civil action in the nature of a debt.

(2) In addition to the civil penalties set out above, any provision of any Town ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

(3) In addition to the civil penalties set out above, any provision of any Town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the General Court of Justice. When a violation of such a provision occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

(4) An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that grass and weeds be cut; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the applicable Town ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judicial order. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(5) The provisions of any Town ordinance may be enforced by one, all, or a combination of the remedies authorized and prescribed by this Section.

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(B) Procedures.

(1) This paragraph (B) sets forth the procedures to be followed in enforcing the provisions of the Code of Ordinances. They shall be utilized unless an individual ordinance codified herein has different procedures, in which event the procedures of the individual ordinance shall be followed.

(2) Unless otherwise provided by a specific provision of any Town ordinance, upon determination of a violation of any section of a Town ordinance, the enforcement official of the Town of Lake Lure shall cause a warning citation to be issued to the violator. Such warning citation shall be issued either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County. Such warning citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.

(3) An appeal from a warning citation shall be taken within fifteen (15) days from the date of said warning citation by filing with the enforcement official and with the Board a notice of appeal which shall specify the grounds upon which the appeal is based. Except in any case where the ordinance violated, which is the subject of the warning citation, specifically grants to the Board of Adjustment other powers in considering appeals and such appeal is applied for, the Board of Adjustment in considering appeals of warning citations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of an ordinance, in the factual situation as it relates to the application of an ordinance or both.

(4) Where the enforcement official of the Town determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the enforcement official may amend the warning citation to provide for additional time.

(5) Upon failure of the violator to obey the warning citation, a civil citation may be issued by the enforcement official, either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear before the Town Manager of the Town of Lake Lure, or designee, within fifteen days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the

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citation is paid, otherwise further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

(6) If the violator fails to respond to a citation within fifteen days of its issuance, and pay the penalty prescribed therein, the Town of Lake Lure may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law.

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

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

SECTION FIVE. 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 13th day of March, 2012.

CONSIDER ADOPTION OF ORDINANCE NO. 12-02-14A AMENDING CHAPTER 90 OF THE TOWN OF LAKE LURE CODE OF ORDINANCES PERTAINING TO ABANDONED STRUCTURES AND UNFIT DWELLINGS

Public notices were duly published in the Daily Courier newspaper and a public hearing regarding proposed Ordinance No. 12-02-14A was held on February 14, 2012 at the regular town council meeting.

Commissioner Diane Barrett made a motion to adopt Ordinance No. 12-02-14A. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 12-02-14A

AN ORDINANCE CONCERNING ABANDONED STRUCTURES AND UNFIT DWELLINGS; AMENDING CHAPTER 90 OF THE CODE OF ORDINANCES OF THE TOWN OF LAKE LURE

WHEREAS, Article 8 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-174, et seq., delegates to municipalities the authority to exercise the general police power; and

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WHEREAS, Part 6 of Article 19 of the North Carolina General Statutes, N.C.G.S. 160A-441, et seq., authorizes municipalities to provide for the repair, closing or demolition of any abandoned structure or unfit dwelling;

WHEREAS, N.C.G.S. 160A-193 authorizes municipalities to summarily remedy, abate or remove public health nuisances; and

WHEREAS, the Lake Lure Town Council finds that it is in the public interest to amend Chapter 90 of the Town's Code of Ordinances to provide more specificity as to the requirements for regulating abandoned structures and unfit dwellings; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 14th day of February 2012, 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 90 of the Code of Ordinances of the Town of Lake Lure, entitled "Abandoned Structures; Unfit Dwellings," is hereby amended as noted below. Throughout this Ordinance additions to text are designated by underlining, whereas deletions are designated by the use of strike-through.

CHAPTER 90: ABANDONED STRUCTURES; UNFIT DWELLINGS

§ 90.01 FINDING; INTENT; DEFINITION

(A) It is hereby found that there exists within the town dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accident or other calamities; lack of ventilation, light, or sanitary facilities; and other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the town, and that there exists within the town abandoned structures which the Town Council finds to be hazardous to the health, safety, and welfare of the residents of the town due to the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities. Therefore, pursuant to the authority granted by G.S. 160A-174, et seq., and 160A-441, et seq., it is the intent of this chapter to provide for the repair, closing, or demolition of any such dwellings or abandoned structures in accordance with the provisions and procedures as are set forth by law.

(B) Structure. A "structure" is defined as a combination of material to form a construction; the term "structure" shall be construed as if followed by the words "or part thereof".

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(C) Abandoned Structure. Any structure, whether designed and intended for residential or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past two-year period and which is determined by the Code Enforcement Officer to be unfit for human habitation or occupancy based upon the standards as set forth in this Ordinance.

(D) Code Enforcement Officer. The Code Enforcement Officer designated or appointed by the Town Council to carry out the administration and enforcement of this Ordinance.

§ 90.02 DUTIES OF THE TOWN MANAGER CODE ENFORCEMENT OFFICER

The Town Manager Code Enforcement Officer is hereby designated as the town officer to enforce the provisions of this chapter. It shall be his duty to:

- (A) Locate abandoned structures within the town and determine which structures are in violation of this chapter;
- (B) Locate dwellings within the town that are unfit for human habitation;
- (C) Take such action, pursuant to this chapter as may be necessary to provide for the repair, closing, or demolition of such structures and dwellings;
- (D) Keep an accurate record of all enforcement proceedings begun pursuant to the provisions of this chapter, and
- (E) Perform such other duties as may be prescribed herein or assigned to him by the Town Council.

§ 90.03 POWERS OF THE TOWN MANAGER CODE ENFORCEMENT OFFICER.

The Town Manager Code Enforcement Officer is authorized to exercise such powers as may be necessary to carry out the intent and the provisions of this chapter, including the following powers in addition to others granted herein:

- (A) To investigate the condition of buildings within the town in order to determine which structures are abandoned and in violation of this chapter and to report same to Town Council;
- (B) To investigate the condition of dwellings within the town in order to determine those that are in violation of this chapter at to report the same to Town Council;
- (C) To enter upon premises for the purpose of making inspections;

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(D) To administer oaths and affirmations, examine witnesses, and receive evidence; and

(E) To designate such other officers, agents, and employees of the town as he deems necessary to carry out the provisions of this chapter.

§ 90.04 STANDARDS FOR ENFORCEMENT.

(A) Every abandoned structure within the town shall be deemed in violation of this chapter whenever such structure constitutes a hazard to the health, safety, or welfare of the town citizens as a result of:

- (1) The attraction of insects or rodents;
- (2) Conditions creating a fire hazard;
- (3) Dangerous conditions constituting a threat to children; or
- (4) Frequent use by vagrants as living quarters in the absence of sanitary facilities.

(B) In making the determination of whether or not an abandoned structure is in violation of this chapter, the Town Manager Code Enforcement Officer may, by way of illustration and not limitation, consider the presence or absence of the following conditions:

- (1) Holes or cracks in the structure's floors, walls, ceilings, or roof which might attract or admit rodents and insects, or become breeding places for rodents and insects;
- (2) The collection of garbage or rubbish in or near the structure which might attract rodents or insects, or become breeding places for rodents or insects;
- (3) Violations of the fire prevention code which constitutes a fire hazard in such structure;
- (4) The collection of garbage, rubbish, or combustible material which constitutes a fire hazard in such structure;
- (5) The use of such structure or nearby grounds or facilities by children as a play area;
- (6) Repeated use of such structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking, or eating.

(C) A dwelling within the town shall be deemed unfit for human habitation, and the Town Manager Code Enforcement Officer may so determine, if he finds that conditions exist in the

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dwelling that render it dangerous or injurious to the health, safety, or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the town.

(D) In seeking the determination of whether or not a dwelling is in violation of this chapter, the Town Manager Code Enforcement Officer may, by way of illustration and not limitation, consider the following defective conditions:

- (1) Defects therein increasing the hazards of fire, accidents, or other calamities;
- (2) Lack of adequate ventilation, light, or sanitary facilities;
- (3) Dilapidation;
- (4) Disrepair;
- (5) Structural defects;
- (6) Uncleanliness.

§ 90.05 PROCEDURE FOR ENFORCEMENT.

(A) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the Town Manager Code Enforcement Officer by a public authority or by at least five residents of the town charging that any dwelling or structure is in violation of this chapter or whenever it appears to the Manager Code Enforcement Officer, upon inspection, that any dwelling or structure exists in violation hereof, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or structure a complaint stating the charges and containing a notice that a hearing will be held before the Manager Code Enforcement Officer at a place therein fixed, not less than ten or more than 30 days after the serving of the complaint. The owner or any party in interest shall have the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint. Notice of such hearing shall also be given to at least one of the persons signing a petition relating to such dwelling or structure. Any person so desiring to do so may attend such hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Manager Code Enforcement Officer.

(B) *Notice of lis pendens.* Upon the issuance of a complaint and notice of hearing pursuant to this Section, the Inspector may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing attached thereto, in the Office of the Clerk of Superior Court of Rutherford County, to be indexed and cross-indexed in accordance with the indexing procedures of the North Carolina General Statutes. The Inspector shall cause a copy of the notice of lis pendens to be served upon the owners and parties in interest in the dwelling at the time of filing in accordance with Section 160A-445 of the North Carolina General Statutes, as applicable.

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Upon compliance with the requirements of any order issued based upon such complaint and hearing, the Inspector shall direct the Clerk of Superior Court to cancel the notice of lis pendens.

(B) Procedure after hearing.

(1) After such notice and hearing, the Manager shall state in writing his determination whether such dwelling or structure violates this chapter, including his findings of fact in support of that determination.

(2) If the Manager determines there is a violation he shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter, and improve such dwelling or structure or else remove or demolish the same within a specified period of time not to exceed 90 days.

(C) Procedure after Hearing; Order. If, after notice and hearing, the Code Enforcement Officer determines that the structure under consideration is unfit for human habitation in accordance with the standards set forth herein, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order.

(1) If the repair, alteration or improvement of the dwelling **can be** made at a cost of less than fifty (50) percent of the value of the dwelling, requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation, based upon the Code Enforcement Officer's standards for closing dwellings; or

(2) If the repair, alteration or improvement of the dwelling **cannot be** made at a cost of less than fifty (50) percent of the value of the dwelling, requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

(D) Failure to comply with order.

(1) In personam remedy. If the owner of any dwelling or structure shall fail to comply with an order of the Manager Code Enforcement Officer within the time specified therein, the Manager Code Enforcement Officer may submit to the Town Council at its next regular meeting a resolution directing the Town Attorney to petition the superior court for an order directing such owner to comply with the order of the Inspector, as authorized by G.S. 160A-446 (g).

(2) In rem remedy. After failure of an owner of a dwelling or structure to comply with an order of the Manager Code Enforcement Officer within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in division (C)(D)(1) above, the Manager Code Enforcement Officer shall submit to the Town Council an ordinance ordering the Manager Code Enforcement Officer to cause such dwelling or structure to be

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repaired, altered or improved, vacated and closed, or removed or demolished, as provided in the original order of the Manager Code Enforcement Officer and pending such repair, alteration, improvement, vacating, closure, removal or demolition, to placard any such dwelling as provided by G.S. 160A-443.

(E) Appeals.

(1) The Board of Adjustment is hereby appointed as the Housing Appeals Board to which appeals from any decision or order of the Code Enforcement Officer may be taken. Except where this Chapter provides for different rules or procedures, the Board of Adjustment acting as the Housing Appeals Board shall follow its rules of procedure, which may be amended to provide specifically for this function.

(2) An appeal from any decision or order of the Code Enforcement Officer may be taken by any person aggrieved thereby or by any officer, board or commission of the Town. Any appeal from the Code Enforcement Officer shall be taken within fifteen (15) days from the rendering of the decision or service of the order by filing with the Code Enforcement Officer and with the Board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Code Enforcement Officer shall forthwith transmit to the Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Code Enforcement Officer refusing to allow the person aggrieved thereby to do any such act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Code Enforcement Officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Code Enforcement Officer certifies to the Board after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the Code Enforcement Officer, by the Board, or by a court of record upon petition made pursuant to Subparagraph (E)(5) of this Section.

(3) The Board of Adjustment shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Code Enforcement Officer, but the concurring vote of four-fifths of the members of the Board shall be necessary to reverse or modify any decision or order of the Code Enforcement Officer. The Board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Chapter, to adapt the application of the Chapter to the necessities of the case to the end that the spirit of the Chapter shall be observed, public safety and welfare secured, and substantial justice done.

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(4) Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.

(5) Any person aggrieved by an order issued by the Code Enforcement Officer or a decision rendered by the Board may petition the Superior Court for an injunction, restraining the Code Enforcement Officer from carrying out the order or decision and the Court may, upon such petition, issue a temporary injunction restraining the Code Enforcement Officer pending a final disposition of the cause as provided by G.S. 160A-446(f). The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the Court on a petition within 20 days, and shall be given preference over other matters on the Court's calendar. The Court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this Subsection.

(D) Petition to superior court by owner. Any person aggrieved by an order issued by the Manager shall have the right, within 30 days after issuance of the order, to petition the superior court for a temporary injunction restraining the Manager pending a final disposition of the cause, as provided by G.S. 160A-446(f).

§ 90.06 METHODS OF SERVICE OF COMPLAINTS AND ORDERS.

Complaints or orders issued by the Town Manager shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the Manager in the exercise of reasonable diligence, the Manager shall make an affidavit to that effect, and the serving of such complaint or order upon such person may be made by publication in the manner prescribed in the North Carolina Rules of Civil Procedure. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.

(Ord. passed 3-23-82)

(A) Complaints or orders issued by the Code Enforcement Officer shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(B) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by registered or certified mail, and the inspector makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the Town at least not later than the time at which personal service would be required under the provisions of

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this Ordinance. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

§ 90.07 IN REM ACTION BY MANAGER CODE ENFORCEMENT OFFICER; PLACARDING.

(A) After failure of an owner of a structure to comply with an order of the Town Manager Code Enforcement Officer issued pursuant to the provisions of this chapter, and upon adoption by the Town Council of an ordinance authorizing and directing him to do so, as provided by G.S.160A-443(5) and § 90.05(C)(D) of this chapter, the Manager Code Enforcement Officer shall proceed to cause such structure to be repaired, altered or improved, vacated and closed, or removed or demolished, as directed by the ordinance of the Town Council and shall cause be to posted on the main entrance of such structure a placard prohibiting the use or occupation of the structure. Use or occupation of a building so posted shall constitute a misdemeanor.

(B) Each such ordinance shall be recorded in the office of the Register of Deeds in Rutherford County, and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-443(5).

§ 90.08 COSTS A LIEN ON PREMISES.

(A) As provided by G.S. 160A-443(6), the amount of the cost of any removal or demolition caused to be made or done by the Town Manager Code Enforcement Officer pursuant to this chapter shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority, and be enforced and the costs collected as provided by Article 10 Chapter 160A of the General Statutes.

(B) If the dwelling is removed or demolished by the Code Enforcement Officer, he shall sell the materials of the dwelling, and any personal property, fixture or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the Code Enforcement Officer, shall be secured in a manner directed by the Court, and shall be disbursed by the Court to the persons found to be entitled thereto by final order of the decree of the Court.

§ 90.09 ALTERNATIVE REMEDIES.

(A) Neither this chapter nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this chapter by criminal process, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinance or laws.

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(B) In addition to the remedies provided for herein, any violation of the terms of this Chapter shall subject the violator to the penalties and remedies as set forth in Chapter 10, Section 10-99, Enforcement, of the Code of Ordinances of the Town of Lake Lure.

90.10 CONFLICT WITH OTHER PROVISIONS.

In the event any provision, standard or requirement of this Chapter is found to be in conflict with any provision of any other ordinance or code of the Town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the Town's jurisdiction shall prevail. The North Carolina Building Code, current edition, shall serve as the standard for all alterations, repairs, additions, removals, demolitions and other acts of building made or required pursuant to this Chapter.

90.11 VIOLATIONS.

In addition to the conditions, acts or failures to act that constitute violations specified in this Chapter above, it shall be a violation of this ordinance for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or vacate and remove or demolish the same, upon order of the Code Enforcement Officer duly made and served as herein provided, within the time specified in such order. It shall be a violation of this ordinance for the owner of any dwelling, with respect to which an order has been issued pursuant to Section 90.05, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, or vacation and removal or demolition.

90.12 VALIDITY.

If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

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

Adopted this 13th day of March, 2012.

CONSIDER ADOPTION OF ORDINANCE NO. 12-02-14B AMENDING THE TOWN OF LAKE LURE CODE OF ORDINANCES PERTAINING TO WEEDS, GRASS, REFUSE,

AND OTHER NUISANCE CONDITIONS, REPEALING AND REPLACING CHAPTER 83 OF THE CODE OF THE TOWN OF LAKE LURE

Public notices were duly published in the Daily Courier newspaper and a public hearing regarding proposed Ordinance No. 12-02-14B was held on February 14, 2012 at the regular town council meeting.

Commissioner Diane Barrett made a motion to adopt Ordinance No. 12-02-14B. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 12-02-14B

AN ORDINANCE CONCERNING THE REGULATION OF WEEDS, GRASS, REFUSE, AND OTHER NUISANCE CONDITIONS; REPEALING AND REPLACING CHAPTER 83 OF THE CODE OF THE TOWN OF LAKE LURE

WHEREAS, Article 8 of Chapter 160A of the North Carolina General Statutes delegates to municipalities the authority to exercise the general police power; and

WHEREAS, N.C.G.S. 160A-174 specifically authorizes municipalities to enact ordinances 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 such municipality and to define and abate nuisances; and

WHEREAS, N.C.G.S. 160A-193 authorizes municipalities to summarily remedy, abate or remove public health nuisances; and

WHEREAS, the Lake Lure Town Council finds that the existing Chapter 83 of the Town Code has a number of deficiencies that impair the Town's ability to protect the public health, safety and welfare; and

WHEREAS, the Lake Lure Town Council further finds that the revised Chapter 83 of the Town Code remedies those deficiencies and, therefore, is in furtherance of the public health, safety and welfare; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 14th day of February, 2012, 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:

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SECTION ONE. Subject to the caveat stated herein, Chapter 83 of the Code of Ordinances of the Town of Lake Lure, entitled “Weeds, Grass and Refuse”, is hereby repealed and replaced with a new Chapter 83 entitled, “Weeds, Grass, Refuse and Other Nuisance Conditions”. To the extent that the provisions of this chapter are the same in substance as the previously adopted provisions they replace, they shall be considered as continuations thereof and not as new enactments.

SECTION TWO. Chapter 83 of the Code of Ordinances of the Town of Lake Lure, entitled “Weeds, Grass, Refuse, and Other Nuisance Conditions”, is hereby enacted to read as follows:

CHAPTER 83: WEEDS, GRASS, REFUSE, and OTHER NUISANCE CONDITIONS

83.01 Administration.

For the purpose of this Chapter the term "nuisance" shall mean or refer to any condition or any use of property or any act or omission affecting the condition or use of property which threatens or is likely to threaten the safety of the public; adversely affects the general health, happiness, security or welfare of others; or, is detrimental to the rights of others to the full use of their own property and their own comfort, happiness and emotional stability because of decreased property values and the unsightliness and decreased livability of neighborhoods.

83.02 DECLARATION OF PUBLIC NUISANCE

The following enumerated and described conditions, or any combination thereof, are hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety, morals and general welfare of the inhabitants of the Town and are found, deemed and declared to be public nuisances wherever the conditions may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

(A) Any weeds or other vegetation having an overall height of more than twenty-four (24) inches above the surrounding ground provided that the following shall not be considered to be a part of this condition: trees and ornamental shrubs; cultured plants; natural vegetation on undeveloped property that is not a threat to the character of surrounding properties; and flowers and growing and producing vegetable plants.

(B) Any accumulation of trash, garbage, food waste and other trash which is the result of the absence of, or overflowing of, or improperly closed trash or garbage containers, that attracts or is likely to attract mice and rats, flies and mosquitoes or other pests.

(C) An open or unsecured storage or collection place for chemicals, acids, oils, gasoline, flammable or combustible materials or flammable or combustible liquids, poisonous materials or other similar harmful or dangerous substances, gasses or vapors.

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(D) An open place, collection, storage place or concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, or any other combustible materials collection.

(E) An open storage place for old worn out, broken or discarded machinery, car parts, junk, tire rims, furniture, stoves, refrigerators, appliances, cans and containers, household goods, plumbing or electrical fixtures, old rusty metal, fencing materials or other similar materials.

(F) Any accumulation of garbage, rubbish, trash, or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes, mosquitoes, or vermin prejudicial to the public health.

(G) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health.

(H) The open storage of any discarded ice box, furniture, refrigerator, stove, glass, building materials, building rubbish or similar items. The use of carports, open porches, decks, open garages and other outdoor areas that are visible from the street as a storage or collection place for boxes, appliances, furniture (not typical outdoor or yard furniture), tools, equipment, junk, garbage, old worn out broken or discarded machinery and equipment, cans, containers, household goods or other similar condition that increase the likelihood of a fire; may conceal dangerous conditions; may be a breeding place or habitat for mice, rats or other pests; or, create an unattractive condition or visually blighted property

(I) A collection place for lumber, bricks, blocks, nails, building hardware, roofing materials, scaffolding, masonry materials, electrical supplies or materials, plumbing supplies or materials, heating and air conditioning supplies or materials or any other type of old or unusable building supplies (especially those with nails, staples or sharp objects and edges) unless such conditions are temporary in nature and caused by a current construction project in progress pursuant to a lawfully issued building permit.

(J) Any building or other structure which has been burned, partially burned or otherwise partially destroyed and which is hazardous to the safety of any person, is a continuing fire hazard or which is structurally unsound to the extent that the Code Enforcement Officer or his designee can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises.

(K) A collection place, pool or pond of stagnant or foul water or persistent dampness caused by manmade dams, open ditches, overflowing pipes, foundation trenches or other impoundments of any kind.

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(L) Barns or farm animal pens, pastures or enclosures for farm animals which are not kept sanitary and clean or otherwise become a collection place for animal waste and which because of the conditions associated therewith attract rats, mice, flies or other pests or emit foul odors that can be detected or noticed on adjacent properties or are otherwise not kept in a sanitary condition.

(M) Dog lots, pens, pet enclosures of all kinds, outdoor areas where dogs or other pets are chained or kept or areas where dogs and cats are permitted to roam which become a collection place for dog, cat or pet waste and excrement and which attract flies or other pests, emit foul odors which can be detected or noticed on adjacent property or are not kept in a sanitary condition.

(N) A collection place for sewage and sewage drainage or the seepage from septic tanks, broken or malfunctioning plumbing and sewer pipes or any other seepage of dangerous, hazardous or poisonous liquids.

(O) A collection place for tree limbs, dried brush, dead vegetation, stumps or other decayed wood and materials or other similar rubbish that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health.

(P) Any discharge into or polluting of any stream, creek, river or other body of water or the discharge of any dangerous substance or any other material likely to harm the water or any vegetation, fish or wildlife in or along the water or the storage of such harmful materials and substances in a manner so that it is likely that such streams, creeks, rivers or other bodies of water will become polluted or adversely affected in any manner.

(Q) Nuisance vehicle: A vehicle on public or private property that is determined and declared to be a health or safety hazard, including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests; or
- (2) A point of heavy growth of weeds or other noxious vegetation which exceeds twenty-four (24) inches in height; or
- (3) A concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor; or
- (4) An area of confinement which cannot be operated from the inside, such as, but not limited to, trunks or hoods; or
- (5) So situated or located that there is a danger of it falling or turning over; or

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(6) A collection of garbage, food waste, animal waste, or any other rotten or putrescent matter of any kind; or

(7) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or

(8) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Town Council.

(R) Any condition detrimental to the public health which violates the rules and regulations of the County Health Departments.

83.03 COMPLAINT; INVESTIGATION OF PUBLIC NUISANCE

When any condition in violation of this Chapter is found to exist, the Code Enforcement Officer or such persons as may be designated by the Town Council shall give notice to the owner of the premises to abate or remove such conditions within fifteen (15) days. Such notice shall be in writing, shall include a description of the premises sufficient for identification and shall set forth the violation and state that, if the violation is not corrected within fifteen (15) days, the Town may proceed to correct the same as authorized by this Chapter. Service of such notice shall be by any one of the following methods.

(A) By delivery to any owner personally or by leaving the notice at the usual place of abode of the owner with a person who is over the age of sixteen (16) years and a member of the family of the owner.

(B) By depositing the notice in the United States Post Office addressed to the owner's address as reflected on the tax records of Rutherford County with regular mail postage prepaid thereon.

(C) By posting a copy of the notice, in placard form, in a conspicuous place on the premises on which the violation exists, when notice cannot be served by method (1) and (2).

83.04 ABATEMENT PROCEDURE.

If the owner of any property fails to comply with a notice given pursuant to this Chapter, within fifteen (15) days after the service of such notice, he shall be subject to prosecution for violation of this ordinance in accordance with law and each day that such failure continues shall be a separate offense. In addition, the Town may have the condition described in the notice abated, removed or otherwise corrected and all expenses incurred thereby shall be chargeable to and paid by the owner of the property and shall be collected as taxes and levies are collected. All such expenses shall constitute a lien against the property on which the work was done.

83.05 PROCEDURE IS ALTERNATIVE

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The procedure set forth in this Chapter shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances. In addition to the remedies provided for herein, any violation of the terms of this Chapter shall subject the violator to the penalties and remedies as set forth in Chapter 10, Section 10.99, Enforcement, of the Code of Ordinances of the Town of Lake Lure.

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

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

SECTION FIVE. 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 14th day of February, 2012.

PUBLIC FORUM

Mayor Pro Tem John Moore invited the audience to speak on any non-agenda items and/or consent agenda topics.

No one requested to speak.

CONSENT AGENDA

Mayor Pro Tem John Moore presented the consent agenda and asked if any items should be removed before calling for action.

Commissioner Diane Barrett moved, seconded by Commissioner Bob Cameron, to approve the consent agenda items as presented. Therefore, the consent agenda incorporating the following items was unanimously approved and adopted:

- a. minutes of the February 14, 2012 Regular Meeting, the February 28, 2012 6:00 p.m. Special Meeting and the February 28, 2012 7:00 p.m. Special Meeting;

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- b. Resolution No 12-03-13 authorizing the mayor and town clerk to execute a quitclaim deed to Haynes Hill Estates, LLC for a described portion of Seton Road

RESOLUTION 12-03-13

WHEREAS Seton Road in the Town of Lake Lure, as shown on a Plat recorded in Plat Book 27, Page 74, Rutherford County Registry, ends at a gated community owned by Haynes Hill Estates, LLC., which road then extends past said gates to its terminus at a cul de sac.

AND WHEREAS the Town of Lake Lure has not maintained that portion of Seton Road from the gate to it's terminus in the cul de sac for a period of at least ten years;

AND WHEREAS for a period of at least ten years the general public has not been able to access said portion of Seton Road past the gates;

AND WHEREAS Haynes Hill Estates, LLC maintains the gate and that portion of Seton Road past the gate to its terminus at a cul de sac;

AND WHEREAS Haynes Hill Estates, LLC has requested the Town of Lake Lure to release any interest it may still have to that portion of Seton Road described herein;

Being all of the Grantor's right, title and interest, if any, in and to that portion of Seton Road which extends from a point marked "end of Town Maintenance" to the terminus of Seton Road at a cul de sac, all as shown on a Plat of Haynes Hill Estates (Revised) dated November 12, 2001 and recorded in Plat Book 27, Page 74, Rutherford County Registry, reference to which is hereby made.

NOW THEREFORE, the Board of Commissioners of the Town of Lake Lure hereby resolves to convey by Quitclaim Deed any interest it may own in that portion of Seton Road described above to Haynes Hill Estates, LLC.

The Mayor and Town Clerk are hereby authorized to execute a Quitclaim Deed to Haynes Hill Estates, LLC for the above described street referenced in this resolution.

Unanimously adopted this 13th of March, 2012.

- c. a budget amendment to transfer \$30,000 from General Fund Balance into Community Development Legal Services - Attorney RVR (#181) to cover attorney fees associated with the RVR settlement agreement approved on February 28, 2012 as outlined in memo dated March 8, 2012 (Copy of memo is attached); and
- d. a lease agreement between the Town of Lake Lure and the State Employees' Credit Union regarding use of the Town's parking lot space for an ATM.

End of Consent Agenda.

STAFF REPORTS

Town Manager Chris Braund presented the town manager's report dated January 10, 2012. (Copy of the town manager's report is attached)

COUNCIL LIAISON REPORTS & COMMENTS

Commissioner Diane Barrett 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 Bob Cameron reported on the activities of the Lake Lure Board of Adjustment/Lake Structures Appeal Board.

UNFINISHED BUSINESS:

a. OTHER UNFINISHED BUSINESS

There was no other unfinished business.

NEW BUSINESS:

a. DISCUSSION REGARDING PROCEDURE FOR ISSUING VACATION RENTAL OPERATING PERMITS
--

Town Manager Chris Braund provided town council members a memo dated March 13, 2012 regarding procedure for issuing vacation rental operating permits with regard to new rules put into effect by amendments to the vacation rental ordinance adopted on February 28, 2012. (Copy of memo is attached)

Mr. Braund stated the three applicants (Joe Lancaster of 145 Hilltop Court, Deborah Pfieger of 105 Gentle Winds Lane, and Jocelle Allen of 201 Allen Drive) had started the vacation rental application process prior to the adoption of the vacation rental ordinance amendment on February 28, 2012, but hadn't completed the process. Mr. Braund asked council for guidance as to whether these applicants should be subject to the old process and rules or the

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new process and rules. Mr. Braund also stated that town staff recommends letting the three applicants decide which process will be used for their application.

Commissioner Bob Cameron made a motion to allow each of the three applicants to choose which version of the regulations will apply to them for the application process. Commissioner Diane Barrett seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

b. BUDGET DISCUSSION REGARDING COST OF LIVING INCREASES FOR TOWN STAFF

Commissioner Mary Ann Silvey commended town staff their efforts in managing town funds this year and stated that there have been no employee pay increases in three years (except for one small COLA increase). Commissioner Mary Ann Silvey proposed that council look at sources available to fund a cost of living increase of at least 3% for town employees during the present budget period.

Town Council directed town staff to gather information on this topic for review at a future town council meeting.

NEW BUSINESS:

c. DISCUSSION REGARDING THE TOWN'S DEFINITION FOR "MARINA"

Commissioner Bob Cameron stated that the Board of Adjustments had discovered two separate definitions for "marina", one in the town's Lake Structure Regulations and one in the Zoning Regulations. Commissioner Cameron suggested that both definitions be reviewed and possibly amended to provide a more consistent definition.

Zoning Administrator Sheila Spicer stated that recommendation for amendments to the Lake Structure Regulations typically come through the Lake Advisory Board and amendments to the Zoning Regulations come through the Zoning and Planning board.

Town Council suggested that both boards meet and review both definitions of "marina" and recommend to town council a revised definition to go in both the Lake structure Regulations and the Zoning Regulations.

ADJOURN THE MEETING

Commissioner Diane Barrett suggested that town council consider conducting a regular meeting at Rumbling Bald Resort. Town council showed general support for the suggestion and

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directed town staff to contact Rumbling Bald Resort about potentially holding a meeting at Rumbling Bald Resort within the next few months.

Commissioner Diane Barrett commended Blaine and Veryl Lynn Cox for showing support for the town by attending many town meetings

With no further items of discussion, Commissioner Bob Cameron made a motion to adjourn this meeting at 7:55 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