LAKE LURE TOWN COUNCIL
REGULAR MEETING PACKET

Tuesday, June 11, 2013

Mayor Bob Keith

Commissioner John Moore **Commissioner Mary Ann Silvey**

Commissioner Diane Barrett **Commissioner Bob Cameron**

REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL

June 11, 2013
7:00 p.m.
Lake Lure Municipal Center

AGENDA

1.	Call to Order	Mayor Bob Keith
2.	Invocation	Attorney Chris Callahan
3.	Approve the Agenda	Council
4.	Presentation of the Town Budget and Budget Message for Fiscal Year 2013-2014	Town Manager Chris Braund
5.	Public Hearing – Proposed Ordinance No. 12-06-11 Regarding the Town Budget for Fiscal Year 2013-2014	
6.	Consider Adoption of Ordinance No. 12-06-11 Regarding the Town Budget for Fiscal Year 2013-2014	
7.	Public Hearing – Proposed Ordinance No. 13-06-11A Amending the Definition of Private Drives in the Subdivision Regulation and Adding the Definition of Private Drives to the Zoning Regulations	
8.	Consider Adoption of Proposed Ordinance No. 13-06-11A Amending the Definition of Private Drives in the Subdivision Regulation and Adding the Definition of Private Drives to the Zoning Regulations	
9.	Public Forum: *The public is invited to speak on any non-agenda and/or consent agenda topics. Comments should be limited to less than five minutes.*	
10.	Staff Reports	
11.	Council Liaison Reports & Comments	

12. Consent Agenda:

    a. Approve Minutes of the May 13, 2013 (Special Meeting), May 14, 2013 (Regular Meeting), and May 21, 2013 (Special Meeting)

    b. Approve a Request Submitted by Janet Coulthart, Vice President of the Lake Lure Newcomers, to Suspend the Town Alcohol Ordinance for the Lake Lure Newcomers Meeting And Dinner Being Held in the Community Hall on June 29, 2013 from 4:00 p.m. until 8:00 p.m.

    c. Approve Budget Amendments Regarding End of Fiscal Year Fund Over Runs and Silt Reserve Adjustments as Submitted by Finance Director Sam Karr

13. Unfinished Business

    a. Other Unfinished Business

14. New Business:

    a. Board Appointment – Lake Advisory Board

    b. Consider Approval of Subdivision of the Boathouse Property at the Dam & the Declaration of Covenants and Restriction

15. Adjournment

Agenda Item: 4

Agenda Items: 5 & 6

Agenda Items: 7 & 8

TOWN OF LAKE LURE
Community Development Department

Incorporated 1927

MEMORANDUM

TO: Town Council

FROM: Suzy Smoyer, Planner

DATE: June 11, 2013 Town Council Meeting

RE: Ordinance Number: 13-06-11A - Land Development Regulations Concerning Streets and Driveways

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The following request was approved by Town Council at their March 12, 2013 meeting:

"The Community Development Department has identified areas of confusion in the land development regulations as they pertain to streets and driveways. While the definition for streets in the Subdivision Regulations and the Zoning Regulations is consistent, there are provisions for private driveways accessing multiple properties in the Subdivision Regulations that exempt them from certain requirements that apply to streets. These exemptions are not currently recognized by the Zoning Regulations. This has the potential for creating confusion not only for staff, but for property owners, developers, surveyors, and other individuals who attempt to seek various approvals from the Town.

Staff respectfully requests that Town Council commission the Zoning and Planning Board to study this issue and provide recommendations on reconciling the differences between Town regulations as they pertain to streets and driveways."

At their May 14, 2013 meeting, the Zoning and Planning Board recommended that Town Council approve the attached ordinance, stating that the ordinance is consistent with the Lake Lure 2007-2027 Comprehensive Plan.

These changes are recommended for the following reasons:

1. The term private drive and driveway are used interchangeably throughout both the Zoning Regulations and the Subdivision Regulations. The proposed revision to the definition of private drive should include the term "driveway."

2. Currently the definition states that a private drive shall only access one lot. However, Section 91.39A of the Subdivision Regulations specifies an exception that allows a private drive to access up to three lots.

   § 91.39A PRIVATE DRIVES.

No private drives shall serve more than one lot, except that driveways may be permitted to serve up to three residential lots provided each lot fronts a public or private street and after a determination by the Subdivision Administrator that reasonable access from the street to said lots cannot be achieved due to topography or natural features. Driveways shall have a travelway width of not less than 10 feet and shall be surfaced with gravel or pavement. Driveways which intersect with a state road shall require a permit from the North Carolina Department of Transportation. Private drives will not be maintained by the Town of Lake Lure. ***(Amended 11-26-96, 4-9-02)*** *Penalty, see § 91.99*

This exception is not addressed in the Zoning Regulations, and has the potential for creating confusion. The proposed definition clarifies this exception by referencing Section 91.39A of the Subdivision Regulations.

3. The exception for a shared driveway, mentioned above, could fall under the definition for street. Again, this could create confusion. The proposed definition excludes private drives from the definition of street. The definition for street is:

> *Street: In this chapter, a street shall be a right-of-way intended for vehicular traffic which affords the principal means of access to abutting properties.*

If Town Council supports this amendment, please approve a motion adopting the attached ordinance, with a finding that it is consistent with the 2007-2027 Lake Lure Comprehensive Plan.

ORDINANCE NUMBER 13-06-11A

AN ORDINANCE AMENDING THE DEFINITION OF PRIVATE DRIVES IN THE SUBDIVISION REGULATIONS AND ADDING THE DEFINITION OF PRIVATE DRIVES TO THE ZONING REGULATIONS

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

WHEREAS, the Zoning and Planning Board finds that the proposed ordinance is consistent with the 2007-2027 Town of Lake Lure Comprehensive Plan, particularly with regard to "Minimize negative impacts from grading on steep slopes and post-construction stormwater run-off." contained in the Natural Environment and Open Space Section, Policy NE-3-1. The amended definition allows private drives to access up to 3 lots provided it meets the requirements of § 91.39A of the Subdivision Regulations, thus minimizing impacts to environmentally sensitive areas like steep topography; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 11th day of June, 2013, upon the question of amending the Zoning and Subdivision 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. Section 91.06 of the Subdivision Regulations of the Town of Lake Lure, entitled "Definitions", is hereby amended to revise the definition of private drive as follows:

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

Private Drive (Driveway): A private access not intended to be a public ingress or egress. Private drives are intended to provide direct access from one lot or building site to a publicly or privately dedicated and maintained street. However, a private drive may provide access for up to 3 residential lots provided it meets the requirements of § 91.39A of the Subdivision Regulations. Private drives shall be excluded from the definition of street. The term "private drive" shall include the term "driveway".

SECTION TWO. Sections 92.005 of the Zoning Regulations of the Town of Lake Lure, entitled "Definitions", is hereby amended to add a definition for private drives as follows:

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

Private Drive (Driveway): A private access not intended to be a public ingress or egress. Private drives are intended to provide direct access from one lot or building site to a publicly or privately dedicated and maintained street. However, a private drive may provide access for up to 3 residential lots provided it meets the requirements of § 91.39A of the Subdivision Regulations. Private drives shall be excluded from the definition of street. The term "private drive" shall include the term "driveway".

SECTION THREE. Any person violating the provisions of this ordinance shall be subject to the penalties set forth in Section 92.999 of the Zoning Regulations.

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 its adoption.

Adopted this 11 day of June, 2013.

ATTEST:

Andi Calvert
Town Clerk

Bob Keith
Mayor

Approved as to content and form:

_____
J. Christopher Callahan
Town Attorney

Agenda Item: 12a

MINUTES OF THE SPECIAL BUDGET MEETING OF THE LAKE LURE TOWN COUNCIL HELD THURSDAY, MAY 13, 2013, 9:00 A.M. AT THE LAKE LURE MUNICIPAL CENTER

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

Christopher Braund, Town Manager
Sam Karr, Finance Director
Thadd Hodge, Accountant

ABSENT: J. Christopher Callahan, Town Attorney

CALL TO ORDER

Mayor Bob Keith called the meeting to order at 9:00 a.m.

APPROVE THE AGENDA

A motion was made by Commissioner Diane Barrett to approve the agenda as presented. Commissioner Bob Cameron seconded the motion and the vote of approval was unanimous.

REVIEW AND DISCUSSION OF THE DRAFT BUDGET FOR FISCAL YEAR 2013-2014

Council members were provided copies of the draft budget for fiscal year 2013-2014.

Town Manager Chris Braund reviewed the proposed budget and items relating to the administration department.

Public Works director Tony Hennessee answered questions pertaining to items listed in the budget and capital improvement plan for the public works and water departments.

Commissioner Bob Cameron asked Town Manager Chris Braund to put together $250,000 finance packages to potentially use for projects to allow council to explore utilizing financing options to fund future projects. Council members discussed potentially using the proposed loans for multiple departments.

Mr. Braund agreed to create the loan packages and include prioritized projects from each department in the packages.

Lake Operations Director Dean Givens answered questions pertaining to items listed in the budget and capital improvement plan for the Lake Operations department.

Mayor Bob Keith recessed the meeting at 11:00 a.m. and reconvened at 11:10 a.m.

Parks and Recreation Board Chairman Ed Dittmer and Parks and Recreation Supervisor Melody Potter answered questions pertaining to items listed in the budget and capital improvement plan for the Parks and Recreation department.

Community Development Director Shannon Baldwin answered questions pertaining to items listed in the budget and capital improvement plan for the Community Development department.

After review and discussion of the proposed budget, Town Manager Chris Braund agreed to revise the proposed budget incorporating the recommended changes agreed upon by Council members.

ADJOURN THE MEETING

With no further items of discussion, Commissioner Bob Cameron made a motion to adjourn the meeting at 2:45 p.m. Commissioner Diane Barrett seconded the motion and the vote of approval was unanimous.

ATTEST:

Andrea Calvert
Town Clerk

Mayor Bob Keith

MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, MAY 14, 2013, 7:00 P.M. AT THE LAKE LURE MUNICIPAL CENTER

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

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

ABSENT: **N/A**

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

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:

-approval of suspension of the town peddling ordinance for the week of Memorial Day under the consent agenda
-consider approval of a county fire service district contract under new business

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

PUBLIC FORUM

Mayor Bob Keith invited the audience to speak on any non-agenda items and/or consent agenda topics. No one requested to speak.

STAFF REPORTS

Town Manager Chris Braund presented the town manager's report dated May 14, 2013. (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 Zoning and Planning Board.

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

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

CONSENT AGENDA

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

Commissioner John Moore moved, seconded by Commissioner Mary Ann Silvey, to approve the consent agenda as presented. Therefore, the consent agenda incorporating the following items was unanimously approved:

a. minutes of the April 9, 2013 (Regular Meeting) and April 24, 2013 (Special Meeting);

b. a request submitted by Tom McKay on behalf of the board of directors of the Lake Lure Dragon Boat Race to use town property on June 15, 2013 for the 6th Annual Dragon Boat Race and Festival. Also, suspend the town's peddling ordinance for the event; and

c. suspend the town's peddling ordinance for the week of Memorial Day (May 26th, 2013 – June 1, 2013).

End of Consent Agenda.

UNFINISHED BUSINESS:

a. OTHER UNFINISHED BUSINESS

There was no other unfinished business.

NEW BUSINESS:

a. CONSIDER APPROVAL OF PROPOSED SIGNS FOR THE LAKE LURE AND BLUE RIDGE FOOTHILLS WELCOME CENTER

Zoning Administrator Sheila Spicer provided background concerning proposed signs for the Lake Lure and Blue ridge Foothills Welcome Center.

Vic Knight answered questions relating to the proposed signs and reviewed a letter addressed to town council from Rutherford County TDA Executive Director Michelle Whitaker dated May 6, 2013 concerning the proposed signs.

After discussion, Commissioner John Moore made a motion to approve the proposed signs as outlined in a letter from Rutherford County TDA Executive Director Michelle Whitaker dated May 6, 2013. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous. (Copy of letter and drawings of proposed sign attached.)

NEW BUSINESS:

b (part one). CONSIDER APPROVAL OF AN AGREEMENT BETWEEN THE TOWN OF LAKE LURE AND 4 GUYS, INC. CONCERNING PURCHASE OF FIRE DEPARTMENT EQUIPMENT. ALSO, CONSIDER AUTHORIZING THE TOWN MANAGER TO EXECUTE THIS DOCUMENT ON BEHALF OF THE TOWN OF LAKE LURE

Fire Chief Ron Morgan presented a proposed agreement between Lake Lure Fire Department and 4 Guys, Inc. concerning purchase of fire equipment and answered questions relating to the contract.

Town Attorney Chris Callahan suggested that the contract be amended to be in the name of the Town of Lake Lure instead of the Lake Lure Fire Department since Lake Lure Fire Department is not incorporated separately.

Council members discussed the $185,000 down payment required for the truck's chassis and asked that the chassis be titled to the town upon delivery to 4 Guys, Inc.

Commissioner Bob Cameron made a motion to approve the agreement as amended replacing "Lake Lure Fire Department" with "Lake Lure Fire Department, a municipal fire department of the Town of Lake Lure" and include a statement to ensure that the chassis is titled to the town at the time of payment. Also, authorize Town Manger Chris Braund and Fire Chief Ron Morgan to execute the document on behalf of the town. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

b (part two). CONSIDER APPROVAL OF RUTHERFORD COUNTY SERVICE DISTRICT CONTRACT

Fire Chief Ron Morgan presented a proposed service district contract between the Town of Lake Lure and Rutherford County.

After discussion, Commissioner Bob Cameron made a motion to approve the agreement as presented. Commissioner Mary Ann Silvey seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

c. CONSIDER APPROVAL OF A RECOMMENDATION FROM THE TOWN OF LAKE LURE PARKS AND RECREATION BOARD CONCERNING A POLICY FOR PLACEMENT OF MEMORIALS ON TOWN PROPERTY

Town Manager Chris Braund presented the following policy recommendation proposed by the Town of Lake Lure Parks and Recreation Board concerning the placement of memorial on town property:

"In order to control the proliferation of memorials on Town property, individuals seeking to commemorate individuals, business, pets, etc, be offered the opportunity to purchase an engraved brick to be placed in the existing memorial walkway in Morse Park Gardens. The Board recommends a fee of $200 per brick to cover the cost of materials, engraving, and placement. When a larger project is being undertaken, such as a bridge, shelter, or other structure, names of contributors could be placed on an individual plaque by or on the structure."

Mayor Bob Keith stated that all of the council members that served from 2001-2003 were honor by a plaque, except one. Mr. Keith suggested that a plaque be placed to honor Dick McCallum who served on town council 1999-2007.

After discussion, Commissioner Mary Ann Silvey made a motion to approve the policy recommended by the Town of Lake Lure Parks and Recreation Board concerning placement of memorials on town property as presented with the exception of a plaque to be placed to honor former commissioner Dick McCallum. Commissioner Diane Barrett seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

d. APPOINT MEMBERS TO SERVE ON THE RUTHERFORD COUNTY ENHANCED RECYCLING PROMOTION COMMITTEE

After discussion, Commissioner Bob Cameron made a motion to appoint the following individuals to serve on the Rutherford County Enhanced Recycling Promotion Committee:

1) elected official: Bob Keith
2) staff member: Chris Braund
3) citizens: Valerie Hoffman and Blaine Cox

Commissioner Diane Barrett seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

e. CONSIDER APPROVAL OF A LEASE AGREEMENT WITH DUKE ENERGY CONCERNING PLACEMENT OF COMMUNICATION ANTENNAS

Town Manager gave an overview of a proposed agreement between the Town of Lake Lure and Duke Energy for placement of communication antennas.

Dale Brooks representing Duke Energy answered questions relating to the proposed lease agreement.

Commissioner John Moore asked that the sentence in section 5.1 stating that "No invoices for rental due shall be issued by Lessor" be amended to say that "No invoices for rental due shall be required by Lessor".

Town Attorney Chris Callahan expressed concerns about the agreement being called a lease due to the term length of the contract based on G.S. 160A-272. Mr. Callahan suggested that the document be an "agreement" or "license agreement" instead of a lease or that the contract

term be amended to be two automatically renewing five year terms instead of the proposed 15 cumulative year term.

Commissioner Bob Cameron made a motion to approve the contract as amended and allow town manager Chris Braund to execute the agreement on behalf of the town after the proposed amendments to the contract are made. Commissioner John Moore seconded the motion and the vote of approval was unanimous.

Mr. Brooks agreed to discuss the proposed changes with his council and work with Town Manager Chris Braund to complete the agreement.

ADJOURN THE MEETING

With no further items of discussion, Commissioner Bob Cameron made a motion to adjourn the meeting at 8:16 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

Agenda Item: 12b

TOWN OF LAKE LURE
REQUEST FOR SUSPENSION OF TOWN ORDINANCES
REVIEW BY POLICE DEPARTMENT

Date of Request: 6/7/13

By: Janet Coulthart

Describe Request: The Newcomers Club is asking to have the alcohol ordinance suspended during the hours of 4 pm to 8 pm on June 29 for their dinner meeting in the Community Hall .

Reviewed by: Acting Chief Sean Humphries
Police Chief

Comments from LLPD:

Note: Complete form and return to Town Clerk
Form: ADM-9-00

May 28, 2013

Andi Calvert, Town Clerk

Town of Lake Lure

Lake Lure, NC 28746

Dear Andi,

I am sending this letter to ask the council to suspend the alcohol ordinance for the Lake Lure Newcomers meeting and dinner scheduled for Saturday, June 29 from 4:00 - 8:00 PM in the Town Hall meeting room. We would like to serve wine and beer at this event. I understand that the alcohol must stay inside the building.

Thank you for your consideration in this matter.

Respectfully,

Janet Coulthart

Newcomers V.P.

Agenda Item: 12c

Town of Lake Lure

P. O. Box 255 • Lake Lure, NC 28746-0255 • 828/625-9983 • FAX 828/625-8371

Incorporated 1927

MEMORANDUM

To: Town Council
From: Sam A. Karr, Finance Director
Subject: Budget Amendments-Over runs and Silt Reserve Adjustments
Date: June 4, 2013

As we are winding down this fiscal year we need to clean up and address some over runs in the budget:

- Although the separation package was not budgeted in the Police Department, a good portion can be absorbed within the department. To cover this over run, we will need to **transfer $20,700 from contingency (#970) into the Police Department.**

- During the past month, the septic drain field at the fire station has been failing. As an emergency, we received a couple of bids to put in a new drain field. An additional $10,000 should be enough to cover this expense. A motion to **transfer $10,000 from contingency (#970) to the Fire Department will be required.**

- After the budget was approved last year, we received notification from our IT vendor that they were increasing their rates. To manage this expenditure, a motion to **transfer $16,500 from Insurance & Bonding (#450) into Central Services-Technology & Telecommunication would be necessary.**

- Part of the collections we receive from ABC money is earmarked to be spent for Drug and Alcohol Education. We used **$659.00 this past year and need to transfer that amount into the Police Dept. (#220) from the ABC fund.**

- The Water & Sewer Fund has been hit hard this year with equipment repairs in the water department and chemical costs in the sewer. **A motion to transfer $10,000 to water and $10,000 to sewer from Water & Sewer Fund should take care of any additional expenses for the remainder of the fiscal year.**

- Although the town's revenues in our Hydro-electric fund have been fantastic (to date, $214,533 above our estimates), we have incurred a few expenses and repairs too. **A motion, to increase revenues and expenditures by $50,000 each should cover the expenses.**

- The last item to account for is the balance left over for silt monies. As you are all aware, the town's policy is to transfer unused portion of operating silt monies to

our Silt Removal Reserve, if the operating funds can support it. A motion **to move $42,500 from General Fund Silt Removal (#697) and $50,000 from Hydro-electric Fund (#697) for a grand total of $92,500 into the town's Reserve for Silt Removal Fund** is desired. This transfer would bring the balance of the silt reserve fund to **$270,145.00.**

Thank you for your time and attention.

XC: Chris Braund, Town Manager
Thadd Hodge, Accountant
Sean Humphries, Acting Police Chief
Ronald J. Morgan, Fire Chief
Dean Givens, Lake Ops Director
Files

Agenda Item: 14a

LAKE ADVISORY BOARD

List of candidates to be considered to fill the remainder of David Efird's regular position on the Lake Advisory Board (term expiring December 31, 2013).

1. Gary Hasenfus

RECEIVED
MAY 31 2013
BY:

VOLUNTEER APPLICATION FORM

Name: Gary W. Hasenfus

Address: 160 Burnt Ridge Rd. Lake Lure Resident for 15 years

Home Phone: 625 2550 Cell Phone: _____ Email: garyhasenfus@bellsouth.net

Employer: Self Address: Ins. Broker Lake Lure

PLEASE CHECK THE APPROPRIATE BOX AND INDICATE A PREFERENCE IF CHECKING MORE THAN ONE

☐	☐	☒	☐	☐
Board of Adjustment & Lake Structure Appeals Board	Zoning & Planning Board	Lake Advisory Board	Parks & Recreation Board	ABC Board

Rationale and qualifications for serving: LAB 8 years 2002-2010 VWIN 9 yrs 3 yrs as director - wish to complete term created by recent member resignation.

Other volunteer activities in which you are currently involved, including other Boards or Committees:

Elder @ Fairfield Chapel, Cove Capt. Work with Dean Givens on Fishery projects + clean lake debris.

Other information you feel might be pertinent, including current or prior occupation or resume:

Signature: [signature] Date: 05-25-2013

Please see other side for a description of Town Boards

Agenda Item: 14b

TOWN OF LAKE LURE
Community Development Department

Incorporated 1927

MEMORANDUM

TO: Town Council
FROM: Suzy Smoyer, Planner/ Subdivision Administrator
DATE: Town Council Meeting June 11, 2013
RE: Declaration of Covenants and Restriction & Subdivision of Boathouse property

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Background

The town owns a boathouse on Buffalo Shoals Road on the north side of the dam. It once housed the EMS rescue boat and is now used as parking for town boats, including the fireboat at times. It is on an 8.4-acre parcel of land that also includes the dam and lake operations office. The town's primary_objective is to subdivide the parcel to facilitate the sale of a town asset that can provide financing for Lake Operations Office improvements—including the construction of covered, floating docks for town boats. The current boathouse is not well positioned or suited for the town's use and represents an ongoing maintenance liability. It's believe that the town can get more value from the property by selling it rather than by utilizing and maintaining it as it is currently being used. Therefore, the Town Manager directed staff to explore the potential subdivision and sale of the subject property. It was determined that the site is not suitable for residential development. However, there is potential for sale of the property for recreational use and lake access. However, there will be significant limitations. One limitation is the fact that there is no access to water or sewer service. As such, the property can only be subdivided if it is restricted as open space in accordance with Section 91.47 of the Subdivision Regulations. This restriction will still allow for limited use by a private property owner.

Proposed Open Space Restriction

Please review the attached declaration of covenants and restrictions. This document will need to be approved by Town Council and recorded at the County Register of Deeds in order to subdivide the boathouse property (0.49 acre tract). The document restricts the property to open space in accordance with Section 91.47 of the Subdivision Regulations. Please review and approve the attached restriction.

§ 91.47 PERMANENT OPEN SPACE LOTS

In some instances, property owners may wish to permanently designate land as open space for conservation and preservation purposes. It is the intent of this section to allow for subdivision of permanently restricted open space lots while relaxing specific standards provided that a plat note is added to the plat and a deed restriction or a conservation easement is recorded with the County Register of Deeds that prohibits development of the property in perpetuity. The plat note, deed restriction and conservation easement may allow limited passive recreational activities. In conjunction with these activities, development on the property is limited to trails, walkways, steps, foot bridges, parking areas and retaining walls necessary for erosion control provided that said development does not exceed 5% of the lot area. A copy of

the recorded deed restriction or conservation easement shall be submitted to the Subdivision Administrator. Provided that the open space lot complies with the above provisions, evidence of adequate water and sewer services is not necessary. ***(Adopted 4-10-12)***

Next Steps

After Town Council's review and approval of the attached declaration of covenants and restrictions, the attached minor subdivision plat can be submitted (by the Town Manager) and approved (by the Subdivision Administrator). The plat and declaration of covenants and restrictions will be recorded at the County Register of Deeds. Upon recordation, the Town can proceed with selling the property to a private party.

DECLARATION OF COVENANTS AND RESTRICTIONS

Prepared by:	Michael Egan, Esq. 318 North Whitted Street Hendersonville, NC 28739
After Recording Return to:	Town of Lake Lure PO Box 255 Lake Lure, NC

NORTH CAROLINA RUTHERFORD COUNTY

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Restrictive Covenants") is made this _____ day of _____, 20___, by _____, with an address of _____ ("Declarant").

RECITALS

WHEREAS. Declarant is the sole owner in fee simple of that certain real property situated in Rutherford County and as particularly described as Lot A of Minor Subdivision for the Town of Lake Lure, as recorded at Map Book ___, Page ___ of the Rutherford County Registry (hereinafter the **"Property"**); and

WHEREAS, the **TOWN OF LAKE LURE** is a municipality incorporated under the laws of the State of North Carolina, with an address at PO Box 255, Lake Lure, North Carolina (**"Town"**); and

WHEREAS, Declarant has received minor subdivision plat approval from Town wherein Declarant has committed to provide and maintain certain open space in accordance with Section 91.47 of the Town's Subdivision Regulations; and

WHEREAS, Declarant is accordingly entering into this Declaration of Covenants and Restrictions in order to dedicate and preserve certain lands within the Property as permanent open space.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the Declarant hereby adopts and declares the Property subject to the restrictions hereinafter set forth, the purposes of which are to dedicate such lands as permanent open space in accordance with the requirements of the Subdivision Regulations of the Town.

ARTICLE I. DURATION OF RESTRICTIVE COVENANTS

The covenants and restrictions contained in these Restrictive Covenants shall be permanent and perpetual, shall run with the land and shall be binding upon Declarant and its successors and assigns as owner of the Property, and all those claiming by, through or under each such owner, in perpetuity.

ARTICLE II. DEDICATION OF PROPERTY AS OPEN SPACE

The Property is hereby dedicated as open space as that term is defined in the Subdivision Regulations of the Town of Lake Lure. Alteration, improvement or development of the Property is expressly restricted except in accordance with the exceptions set forth in Article III hereof.

ARTICLE III. EXCEPTIONS TO RESTRICTIONS

A. The subject property is permanently restricted open space in accordance with § 91.47 of the Subdivision Regulations. Development on this property is limited to passive recreational activities, as defined in § 91.06 of the Subdivision Regulations. In conjunction with these activities, development on the property is limited to trails, walkways, steps, foot bridges, parking areas and retaining walls necessary for erosion control provided that said development does not exceed 5% of the lot area.

B. **Maintenance.** Declarant shall be responsible, at its expense, for maintaining the Property with the purposes set forth herein, including, without limitation, mowing, removal of trash, waste and litter, and efforts to control vandalism and other crimes on the Property.

C. **Vegetation Management.** Declarant may install appropriate native landscaping, remove vegetation for stream restoration, remove or control invasive exotic plants, remove dead and dangerous trees, and prune vegetation to ensure the health of the vegetation as well as the safety of the public on the Property provided these activities do not impair the or degrade the quality of the open space.

D. **Utilities and other Public Purposes.** Declarant shall have the right to grant easements or rights-of-way across the Property for underground utilities and other public purposes consistent with the primary purposes set forth herein. Such easements or rights-of-way shall be located in a manner that will minimize the impact on conservation values.

ARTICLE IV. MISCELLANEOUS

A. **Public Access.** Unless otherwise specifically set forth in these Restrictive Covenants, nothing herein shall convey to or establish for the public a right of access over the Property.

B. **Amendments**. Declarant shall not amend this Declaration of Covenants and Restrictions except with the consent of the Town. Any amendment(s) shall be effective upon recording in the public records of Rutherford County, North Carolina.

IN WITNESS WHEREOF, Declarant, by authority duly given, has hereunto caused these presents to be executed by their respective officers and its seal affixed, to be effective the day and year first above written.

DECLARANT:

NAME OF DEVELOPER

By: _____

_____

STATE OF NORTH CAROLINA

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

_____ _____
Name of Signatory

Date _____

Official Signature of Notary

Notary's printed or typed name

(Official Seal) My commission expires: _____

BOATHOUSE AT 197 BUFFALO SHOALS – FACT SHEET

Lot Size	0.48 acres (20,900 sq. ft) includes Buffalo Shoals Rd. right-of-way
Lot Size (excluding R.O.W.	0.39 acres (17,000 sq. ft.)
Lakefront	100 feet

Permissible Uses (see details in the following pages)

1. Private Use
2. Commercial Use: Marina (Upon Approval of a Rezoning Request)
3. Commercial Use: Outdoor Recreation Facility (Upon Approval of a Rezoning Request)

Zoning Restrictions

The subject property has been permanently designated as an open space lot intended for conservation or passive recreation. A deed restriction has been recorded with the Rutherford County Register of Deeds, Book ____ Page ____ that prohibits development of the property in perpetuity. However, the deed restriction allows limited passive recreation. In conjunction with these activities, development on the property is limited to trails, walkways, steps, foot bridges, parking areas and retaining walls necessary for erosion control provided that said development does not exceed 5% of the lot area. Per Section 92.115 of the Zoning Regulations, the right-of-way will need to be deducted when calculating the lot area. The subject property does not have access to water and sewer services. The property was subdivided without water and sewer in accordance with Section 91.47 of the Subdivision Regulations.

§ 91.47 PERMANENT OPEN SPACE LOTS

In some instances, property owners may wish to permanently designate land as open space for conservation and preservation purposes. It is the intent of this section to allow for subdivision of permanently restricted open space lots while relaxing specific standards provided that a plat note is added to the plat and a deed restriction or a conservation easement is recorded with the County Register of Deeds that prohibits development of the property in perpetuity. The plat note, deed restriction and conservation easement may allow limited passive recreational activities. In conjunction with these activities, development on the property is limited to trails, walkways, steps, foot bridges, parking areas and retaining walls necessary for erosion control provided that said development does not exceed 5% of the lot area. A copy of the recorded deed restriction or conservation easement shall be submitted to the Subdivision Administrator. Provided that the open space lot complies with the above provisions, evidence of adequate water and sewer services is not necessary. ***(Adopted 4-10-12)***

BOATHOUSE AT 197 BUFFALO SHOALS – FACT SHEET

Intended Use	Land Use Classification (per zoning regulations)	Deed Restrictions for on-land uses	Limitation and approvals necessary for lake structures	Types of boat permits that can be issued for this use:	Examples of this type of use
1. Private Use	Outdoor Recreation Facility	Development is limited to trails, walkways, steps, foot bridges, parking areas and retaining walls necessary for erosion control provided that said development does not exceed 5% of the lot area (850 sq. ft.)	• No use of the boathouse as a temporary or full-time living quarters • Maximum of 3 permanent/overnight moorings • The property owner can improve up to 50% of the value of the current structure which basically suggests making cosmetic repairs. Any changes to dimensions or to electrical or plumbing, or repairs that exceed 50% require a lake structure permit. In this case, if a lake structure permit is applied for, a variance would be necessary to make necessary improvements because there is no residence on the lot. They could put in a boardwalk or dock space assuming that all permits are applied for and obtained.	Residential	Use of property and boathouse for individual property owner use or a group of property owners such as a residential development.
2. Commercial Use: Marina	Marina Due to development limitations, the conditional zoning district will allow marinas provided that onsite retail (sale of boats, boat motors and accessories, marine fuel and lubricants, bait and fishing equipment and the like) and onsite boat repair are prohibited. Other on-lake marina operations are permitted such as boat rental, boat slip rental, mooring of service boats (for on-lake boat repair).	Development is limited to trails, walkways, steps, foot bridges, parking areas and retaining walls necessary for erosion control provided that said development does not exceed 5% of the lot area (850 sq. ft.)	• No use of the boathouse as a temporary or full-time living quarters • Maximum of 5 permanent/overnight moorings (if approved as a Marina). Use as a marina (5 slips) requires removal of existing boathouses – no roofs. Use as a marina would require a recommendation from the Lake Structure Administrator and LAB to Council and then final approval from Council.	Commercial Permits: 1. Liveries - Boat rentals or boat use privileges with no operator provided 2. Services - Boating operations utilized by building contractors and boat repair companies.	1. Rental of boats and/ or boat slips * 2. Mooring of service boats for on lake boat repair* * Off site office might be necessary due to development limitations

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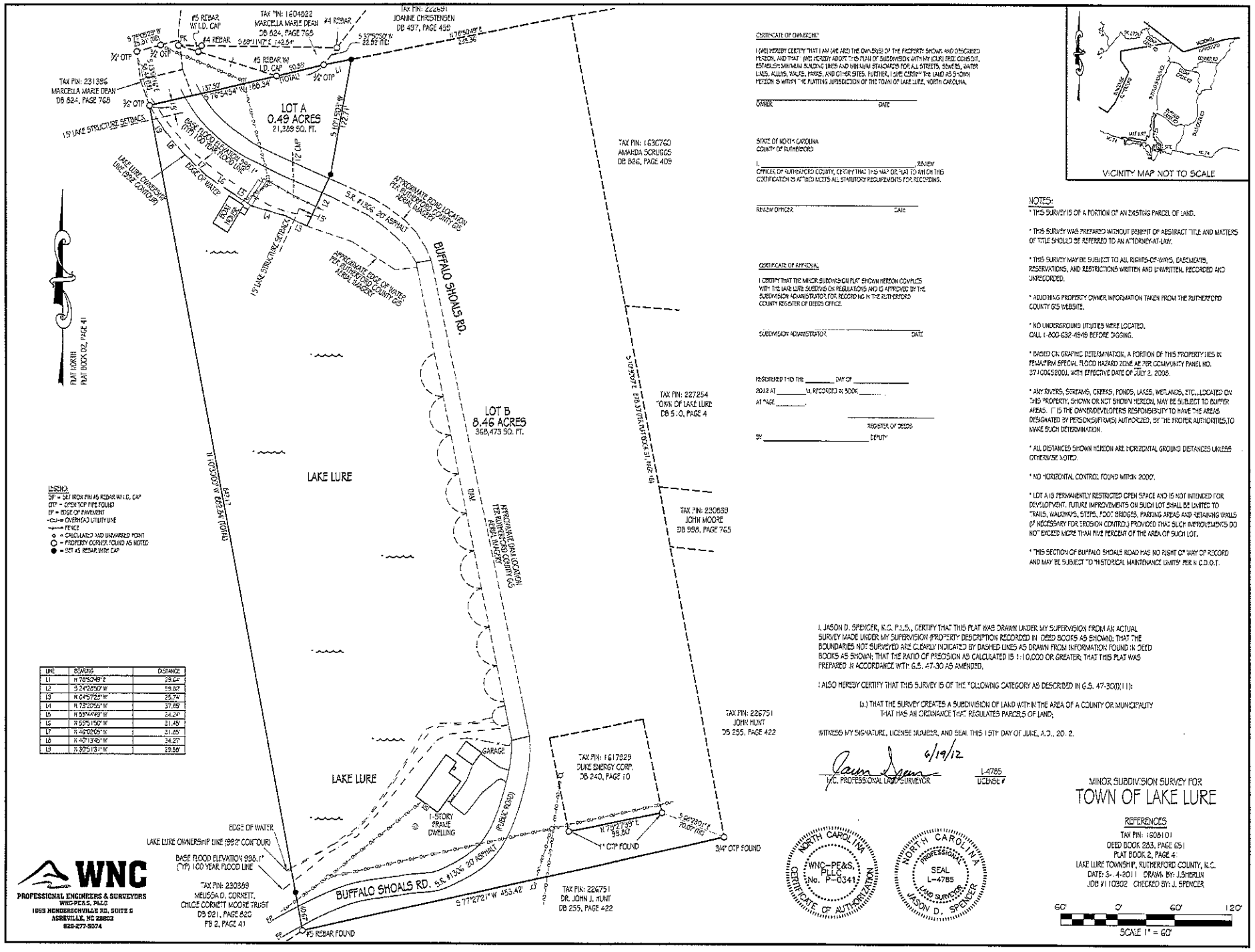
Intended Use	Land Use Classification (per zoning regulations)	Deed Restrictions for on-land uses	Limitation and approvals necessary for lake structures	Types of boat permits that can be issued for this use:	Examples of this type of use
3. Commercial Use: Outdoor Recreation Facility	Outdoor Recreation Facility	Development is limited to trails, walkways, steps, foot bridges, parking areas and retaining walls necessary for erosion control provided that said development does not exceed 5% of the lot area (850 sq. ft.)	• No use of the boathouse as a temporary or full-time living quarters • Maximum of 3 permanent/overnight moorings • The property owner can improve up to 50% of the value of the current structure which basically suggests making cosmetic repairs. Any changes to dimensions or to electrical or plumbing, or repairs that exceed 50% require a lake structure permit. In this case, if a lake structure permit is applied for, a variance would be necessary to make necessary improvements because there is no residence on the lot. They could put in a boardwalk or dock space assuming that all permits are applied for and obtained. • Use of the structures for commercial or multi-dwelling use (e.g., shared use by more than one home) requires review and approval by the Town Council.	Commercial Permits: 1. Liveries – Boat rentals or boat use privileges with no operated provided 2. Resorts – Boating operations available to patrons at resorts, inns or lodging establishments that are staff operated. All clientele must be lodged at facilities within the corporate limits of the Town of Lake Lure. 3. Camps – Boating operations at camp facilities that are staff-operated (all campers must be lodged at facilities within the corporate limits of the Town of Lake Lure) 4. Tour Boats – Boating operations that are not associated with a specific camp, resort, inn or lodging facility that are used to provide piloted tours of the lake 5. Ski Schools – Boating operations utilizing tow boats for providing water sports activities 6. Fishing Guides – Boating operations that are not associated with a specific camp, resort, inn or lodging facility and are used to provide a pilot fishing excursion 7. Services – Boating operations utilized by building contractors and boat repair companies 8. Real Estate Agents – Boating operations utilized by real estate agents	Any of the lake-related businesses listed to the left

BOATHOUSE AT 197 BUFFALO SHOALS – FACT SHEET



LINE	BEARING	DISTANCE
L1	N 78°50'49" E	29.64'
L2	S 24°26'50" W	59.80'
L3	N 64°57'25" W	25.74'
L4	N 73°20'55" W	37.69'
L5	N 55°44'49" W	54.24'
L6	N 55°51'50" W	21.45'
L7	N 46°02'05" W	31.65'
L8	N 40°13'45" W	34.27'
L9	N 30°51'31" W	29.56'

CERTIFICATE OF OWNERSHIP

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON, AND THAT I (WE) HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY (OUR) FREE CONSENT, ESTABLISH MINIMUM BUILDING LINES AND MINIMUM STANDARDS FOR ALL STREETS, SEWERS, WATER LINES, ALLEYS, WALKS, PARKS, AND OTHER SITES. FURTHER, I (WE) CERTIFY THE LAND AS SHOWN HEREON IS WITHIN THE PLATTING JURISDICTION OF THE TOWN OF LAKE LURE, NORTH CAROLINA.

OWNER _____ DATE _____

STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

I, _____, REVIEW OFFICER OF RUTHERFORD COUNTY, CERTIFY THAT THIS MAP OR PLAT TO WHICH THIS CERTIFICATION IS ATTACHED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER _____ DATE _____

CERTIFICATE OF APPROVAL

I CERTIFY THAT THE MINOR SUBDIVISION PLAT SHOWN HEREON COMPLIES WITH THE LAKE LURE SUBDIVIS ON REGULATIONS AND IS APPROVED BY THE SUBDIVISION ADMINISTRATOR FOR RECORD NG IN THE RUTHERFORD COUNTY REGISTER OF DEEDS OFFICE.

SUBDIVISION ADMINISTRATOR _____ DATE _____

REGISTERED THIS THE _____ DAY OF _____
2012 AT _____ M, RECORDED IN BOOK _____
AT PAGE _____.

REGISTER OF DEEDS

BY _____ DEPUTY

NOTES:

* THIS SURVEY IS OF A PORTION OF AN EXISTING PARCEL OF LAND.

* THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT TITLE AND MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY-AT-LAW.

* THIS SURVEY MAY BE SUBJECT TO ALL RIGHTS-OF-WAYS, EASEMENTS, RESERVATIONS, AND RESTRICTIONS WRITTEN AND UNWRITTEN, RECORDED AND UNRECORDED.

* ADJOINING PROPERTY OWNER INFORMATION TAKEN FROM THE RUTHERFORD COUNTY GIS WEBSITE.

* NO UNDERGROUND UTILITIES WERE LOCATED.
CALL 1-800-632-4949 BEFORE DIGGING.

* BASED ON GRAPHIC DETERMINATION, A PORTION OF THIS PROPERTY LIES IN FEMA/FIRM SPECIAL FLOOD HAZARD ZONE AE PER COMMUNITY PANEL NO. 3710065200J, WITH EFFECTIVE DATE OF JULY 2, 2008.

* ANY RIVERS, STREAMS, CREEKS, PONDS, LAKES, WETLANDS, ETC...LOCATED ON THIS PROPERTY, SHOWN OR NOT SHOWN HEREON, MAY BE SUBJECT TO BUFFER AREAS. IT IS THE OWNER/DEVELOPERS RESPONSIBILITY TO HAVE THE AREAS DESIGNATED BY PERSON(S)/FIRM(S) AUTHORIZED, BY THE PROPER AUTHORITIES, TO MAKE SUCH DETERMINATION.

* ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.

* NO HORIZONTAL CONTROL FOUND WITHIN 2000'.

* LOT A IS PERMANENTLY RESTRICTED OPEN SPACE AND IS NOT INTENDED FOR DEVELOPMENT. FUTURE IMPROVEMENTS ON SUCH LOT SHALL BE LIMITED TO TRAILS, WALKWAYS, STEPS, FOOT BRIDGES, PARKING AREAS AND RETAINING WALLS (IF NECESSARY FOR EROSION CONTROL) PROVIDED THAT SUCH IMPROVEMENTS DO NOT EXCEED MORE THAN FIVE PERCENT OF THE AREA OF SUCH LOT.

* THIS SECTION OF BUFFALO SHOALS ROAD HAS NO RIGHT OF WAY OF RECORD AND MAY BE SUBJECT TO HISTORICAL MAINTENANCE LIMITS PER N.C.D.O.T.

I, JASON D. SPENCER, N.C. P.L.S., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (PROPERTY DESCRIPTION RECORDED IN DEED BOOKS AS SHOWN); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED BY DASHED LINES AS DRAWN FROM INFORMATION FOUND IN DEED BOOKS AS SHOWN; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000 OR GREATER; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORY AS DESCRIBED IN G.S. 47-30(f)(11):

(g.) THAT THE SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND;

WITNESS MY SIGNATURE, LICENSE NUMBER, AND SEAL THIS 19TH DAY OF JUNE, A.D., 20. 2.

6/19/12

N.C. PROFESSIONAL LAND SURVEYOR — L-4785 LICENSE #

NORTH CAROLINA WNC-PE&S, PLLC No. P-0341 CERTIFICATE OF AUTHORIZATION

NORTH CAROLINA PROFESSIONAL SEAL L-4785 LAND SURVEYOR JASON D. SPENCER

MINOR SUBDIVISION SURVEY FOR

TOWN OF LAKE LURE

REFERENCES
TAX PIN: 1606101
DEED BOOK 283, PAGE 651
PLAT BOOK 2, PAGE 4
LAKE LURE TOWNSHIP, RUTHERFORD COUNTY, N.C.
DATE: 3-4-2011 DRAWN BY: J.SHERLIN
JOB #110302 CHECKED BY: J. SPENCER

60' 0' 60' 120'
SCALE 1" = 60'

WNC
PROFESSIONAL ENGINEERS & SURVEYORS
WNC-PE&S, PLLC
1033 HENDERSONVILLE RD. SUITE 5
ASHEVILLE, NC 28803
828-277-3074