



MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, AUGUST 8, 2017, 6:00 P.M. AT THE LAKE LURE MUNICIPAL CENTER

PRESENT: Mayor Pro Tem John W. Moore
Commissioner Mary Ann Silvey
Commissioner Bob Cameron
Commissioner Stephen M. Webber
Ron Nalley, Town Manager

William Morgan, Jr., Town Attorney

ABSENT: Mayor Bob Keith

CALL TO ORDER

Mayor Pro Tem John Moore called the meeting to order at 6:00 p.m. and gave the invocation. Council members led the pledge of allegiance.

APPROVE THE AGENDA

Commissioner Stephen Webber made a motion to approve the Agenda as amended moving Public Forum up on the Agenda to immediately follow approval of the Agenda. Commissioner Bob Cameron seconded and the motion carried 4-0.

PUBLIC FORUM

Mayor Pro Tem John Moore invited the audience to speak during public forum.

Garlon Prewitt of 179 Tryon Bay Circle discussed his record of phone calls and conversations from over the past four years concerning a dilapidated structure next door to his property. Mr. Prewitt expressed safety related concerns about the structure and asked that the house be removed. Mr. Prewitt further stated that he would like to be allowed to rebuild his boathouse as it was previously, but he may not be allowed, due to the decreased lake frontage caused by the incident. Council directed Mr. Prewitt to talk with the Town's Community Development Department staff to get updated information concerning the dilapidated structure located next to his property and to work with Environmental Management Officer Clint Calhoun concerning options for rebuilding the boathouse.

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Fran Nordt of 156 Hilltop Court presented a list of additional signatures on a petition to express dissatisfaction with the proposed implementation of a fee for slips on the Lake.

MAYOR COMMUNICATIONS

Mayor Pro Tem John Moore presented a certificate of appreciation to Hallie Zeedik for diligently serving the Town of Lake Lure as Trail Stewardship Coordinator by managing trail maintenance at Buffalo Creek Park and Dittmer-Watts Nature Trail Park, supporting trail construction on the new Weed Patch Mountain Trail, and for being actively engaged and immediately responsive in recovery efforts in the wake of the intensive 7,200 acre Party Rock Fire in November 2016. Council thanked Ms. Zeedik for her service to the Town.

TOWN MANAGER COMMUNICATIONS

- Dam Operator Donnie McCraw introduced Mike Whitaker from Powerhouse Mechanical. Mr. Whitaker provided an update on repairs to the generator at the dam and stated that the cost for the project will exceed the original estimate due to the poor condition of the generator. Town Manager Ron Nalley gave an update on House Bill 589 stating that it was signed by the Governor on July 27, 2017. Mr. Nalley provided Council Members a handout drafted by Andrew Givens of Cardinal Energy containing a suggested strategy for small hydro plant operators to consider following in response to the Bill. It was the consensus of Town Council that Mr. Nalley should continue working with Town Attorney William Morgan to draft a motion to intervene by August 16, 2017.
- Town Manager Ron Nalley provided an update on the Lake Lure Classical Academy Improvements Agreement and stated that Town staff met with school officials August 2, 2017 and discussed the Agreement. Mr. Nalley agreed to provide notes from the meeting to Town Council.
- Mr. Nalley stated that the Isothermal Analysis of Impediments to Fair Housing report was included in the meeting packet for the Board to review.
- Mr. Nalley reported that two Town surveys are currently open and doing well.
- Mr. Nalley stated that the Rutherford County Tourism Development Authority will meet on August 16, 2017 with a small committee from Lake Lure to work with Destination by Design. Council appointed Commissioner Stephen Webber represent Town Council on the committee along with Mayor Bob Keith.
- Mr. Nalley announced that beginning at 4:00 a.m. Friday, August 11, 2017 the Town of Lake Lure and Chimney Rock Village will be featured on WSPA News Channel 7's Daybreak Spotlight. Mr. Nalley advised citizens to follow the Town's Facebook page for final times and locations for the broadcast.

PUBLIC HEARING

A. PUBLIC HEARING ORDINANCE NO. 17-08-08 CLARIFYING SECTION 92.999 OF THE ZONING REGULATIONS REGARDING CIVIL PENALTIES

Community Development Director Shannon Baldwin stated that Town Council directed the Zoning and Planning Board to study the manner in which Civil Penalties are assessed and to recommend changes to the Zoning Regulations if needed. After lengthy discussion with the Lake Structure Administrator, Zoning Administrator and Community Development Director, the Zoning and Planning Board recommended Town Council approve an amendment that seeks to clarify language relative to Civil Penalties.

Commissioner Stephen Webber expressed concerns about citizens' potential inability to understand the Civil Penalties listed on the Fee Schedule due to the absence of language that is in the Ordinance. Town staff agreed to review the Fee Schedule and add clarifying language.

COUNCIL LIAISON REPORTS & COMMENTS

Commissioner Stephen Webber reported the activities of the Board of Adjustment, Lake Structure Appeals Board and the Parks and Recreation Board.

Commissioner John Moore reported the activities of the Zoning and Planning Board.

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

Commissioner Bob Cameron reported the activities of the Utility Advisory Board. Commissioner Cameron stated that the Board discussed requiring use of down lighting for commercial buildings and power poles and suggested that the Zoning Planning Board discuss the matter further and consider drafting an amendment to the Zoning Regulations. Council agreed to add this item to the list of items being sent to the Zoning and Planning Board for review.

CONSENT AGENDA

Mayor Pro Tem John Moore presented the Consent Agenda and asked if any items should be removed before calling for action. Commissioner Stephen Webber made a motion to approve the Consent Agenda as amended adding direction to the Zoning and Planning Board to study requiring the use of down lighting under item c on the Consent Agenda. Commissioner Bob Cameron seconded and the motion carried 4-0. Therefore, the Consent Agenda incorporating the following items was unanimously approved and adopted:

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- A. The July 11, 2017 Regular Meeting Minutes
- B. Suspension of Chapter 61 of the Lake Lure Code of Ordinances for the PAWS Pet Fest at Morse Park sponsored by PAWS of Rutherford County being held on August 26, 2017.
- C. The request for review and consideration from the Zoning and Planning Board dated July 25, 2017 and additional direction to the Zoning and Planning Board to study down lighting for commercial building and power poles.
- D. Approve an Application for Fabric Structure submitted by the Chamber of Hickory Nut Gorge for the 8th Annual Dirty Dancing Festival.

UNFINISHED BUSINESS:

**A. DUKE ENERGY FRANCHISE RENEWAL – SECOND READING
SUGGESTED MOTION: APPROVE ORDINANCE 17-07-11 GRANTING A
FRANCHISE TO DUKE ENERGY CAROLINAS, LLC**

Commissioner Stephen Webber made a motion to adopt Ordinance No. 17-07-11 granting a franchise to Duke Energy Carolinas, LLC. Commissioner Bob Cameron seconded and the motion carried 4-0.

**ORDINANCE 17-07-11
GRANTING A FRANCHISE
TO DUKE ENERGY CAROLINAS, LLC**

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS (Governing body)
OF THE TOWN OF LAKE LURE, as follows:

I. DEFINITIONS

- 1.1 As used in this Ordinance, the following terms, words and phrases shall have the meanings respectively ascribed to them in this section:

“Duke Energy” shall mean Duke Energy Carolinas, LLC; a North Carolina limited liability company organized under the laws of the State of North Carolina and authorized to do business in the State of North Carolina and any assignee of or successor in interest to Duke Energy Carolinas, LLC; under this franchise Ordinance.

“Town” or “Town of Lake Lure” shall mean the Town of Lake Lure, a municipal corporation located in Rutherford County, North Carolina; the area within the territorial Town limits of the Town of Lake Lure and within the extraterritorial area surrounding the Town to the extent it may be lawfully included as presently or hereafter fixed by law or ordinance; or

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the Board of Commissioners or any officer or agent duly authorized in acting on behalf of the Town as a municipal corporation, as indicated by the context by which the term is used.

“Board of Commissioners” shall mean the governing body of the Town of Lake Lure.

II. FRANCHISE GRANTED

- 2.1 Duke Energy is hereby granted the right to construct, operate and maintain an electrical utilities system, including such communications infrastructure as is necessary and convenient for the electrical utility’s purpose, within the Town and within the extraterritorial area surrounding the Town, to the extent the Town may lawfully do so, for the generation, transmission, distribution and sale of electricity to consumers and users within the Town and to the Town and any and all agencies and departments thereof. Duke Energy is also given permission to do all acts necessary or helpful for the purposes enumerated hereinabove or hereinafter; and assent, and permission is hereby given and granted to Duke Energy, its successors and assigns, to exercise all powers, right and privileges which Duke Energy under and by the terms of its charter, or otherwise is authorized, empowered or permitted to conduct, carry on, exercise, do or transact including, without limitation, the power, right and privilege to use, lease, sell, convey and transmit power by electricity for manufacturing, lighting, heating, motive power or other purpose or purposes and for the doing of an electrical business generally.
- 2.2 Duke Energy is hereby granted the right, authority, and privilege to construct and install, operate, maintain, renew, replace and repair electrical and communications facilities including but not limited to lines, cables, towers, poles, conduits, transformers, connections and services thereto, in, though, across, along and under streets, avenues, roads, public alleys, lanes, parks, squares, and other public places and ways in the Town for the generation, transmission, distribution and sale of electricity, its communications purposes and for any and all other approved purposes, subject to the terms and conditions hereinafter set forth in this Ordinance; provided, however, that nothing in this Ordinance shall authorize or permit the construction of a cellular tower or similar facility within the public areas described herein without further approval of the Town.
- 2.3 If the Town determines that it is necessary to expand, widen, or improve a road or other public way, the Town may require Duke Energy to relocate its facilities that are in conflict with such expansion, widening or improvement. If the Town requests such a relocation, it will provide an acceptable alternate location for Duke Energy’s facilities at no cost to Duke Energy. If Duke Energy’s facilities are, or were originally, located on private property, the Town shall pay for the cost of relocation. If, however, Duke Energy’s facilities were originally located within the

existing public right-of-way which is being, expanded, widened or improved, Duke Energy shall bear the expense of relocating its facilities. If any street improvement project is to be funded in whole or in part by the State of North Carolina or the federal government, or an agency thereof, the Town will cooperate with Duke Energy in obtaining reimbursement for its relocation cost to the extent allowable under state and federal law. Such reimbursement, when received, shall be an offset against the cost of relocation to be paid by the Town. The relocation cost and reimbursement for relocation costs for facilities installed to provide electric service to the Town, including street and area lighting and traffic signals wherever located, shall be determined and paid by the Town in accordance with the Applicable Rate Schedules and Service Regulations of Duke Energy on file with the North Carolina Utilities Commission, as the same now exist or as they or any of them may be hereafter amended, modified, changed or annulled in accordance with the laws and regulations pertaining thereto.

- 2.4 Whenever Duke Energy shall cause any opening, excavation or alteration to be made in any street, lane or public place within the Town in the construction, operation or maintenance of any of its electrical and communications facilities including but not limited to lines, cables, towers, poles, conduits, transformers, connections and services owned or used by it, Duke Energy shall cause such portions of said street, lane or public place to be restored to the same condition in which it found them as nearly as practicable. Additionally, if Duke Energy shall fail to restore the area to its approximate former condition within a reasonable period of time, but no less than thirty working days after notification by the Town, the Town shall proceed to restore such streets, lanes and public places as nearly as practicable to their original condition and the Town shall submit a statement of the costs for this restoration to Duke Energy. Duke Energy agrees to pay the Town for these costs within thirty days.
- 2.5 Pursuant to N.C.G.S. 160A-319(a) this franchise is granted for a term of sixty (60) years beginning August 8, 2017, and ending at midnight August 7, 2077, and thereafter it shall renew and continue in force on a year to year basis unless terminated by either party upon ninety days written notification to the other. Notwithstanding the foregoing, in the event that the electric industry in North Carolina is deregulated or restructured by state or federal legislation or regulation, or state or federal judicial action which affects retail distribution to the extent that the inhabitants of the Town may choose their electric supplier, then upon the date when such legislative, regulatory or judicial action has the force and effect of law, this franchise may be at any time thereafter terminated by either party upon ninety days written notification to the other. This franchise supersedes any and all former rights or franchises of Duke Energy to operate an electrical utilities system in the Town with respect to all acts and things done or admitted to be done, on or after August 8, 2017.

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- 2.6 Duke Energy is hereby granted the right during the existence of this franchise to mortgage or hypothecate this franchise, together with all rights and privileges hereunder and any right or interest therein, as security for indebtedness, subject to acceptance by any legal successor in interest of the obligations, duties, liabilities, limitations and prohibitions set out herein and subject to approval by the North Carolina Utilities Commission or other government agency whose approval is required by law. Duke Energy may not assign or transfer its rights under this franchise agreement without the express consent of the Board of Commissioners and such consent shall not be unreasonably withheld, provided, however, that this provision shall not require Duke Energy to obtain permission from the Board of Commissioners prior to assigning its rights hereunder to any new entity created in any corporate reorganization or merger in which Duke Energy is a party.
- 2.7 Duke Energy shall save the Town, Mayor, Board of Commissioners, and the Town's officers, agents, servants and employees, harmless from all loss against any and all claims, suites, actions, liability, and judgments for damages (including but not limited to costs and expenses for reasonable legal fees and disbursements and liabilities assumed by the Town in connection therewith) sustained by the Town or the Mayor or the Board of Commissioners, or the Town's officers, agents, servants or employees, on account of any suit, judgment, execution, claim, or demand whatsoever resulting or in any manner arising from sole negligence on the part of Duke Energy, its officers, agents, servants and employees in the construction, erection, operation and maintenance of its electric distribution system or the conduct of its business, such negligence having been determined by final order of a court of competent jurisdiction, not subject to appeal.

III. ACCEPTANCE OF FRANCHISE

This Ordinance shall take effect from the day of its passage, but only after it has been accepted in all its terms and revisions by Duke Energy, in writing, within sixty days after its passage otherwise, the same shall be null and void and of no effect.

This Ordinance was passed by a majority vote of the Board of Commissioners of the Town of Lake Lure, at the regular meeting of the Board of Commissioners held in the Town of Lake Lure, North Carolina the 11th day of July, 2017 and was again passed by a majority vote of the Board of Commissioners of the Town of Lake Lure for the second time at the regular meeting held in the Town of Lake Lure North Carolina, on the 8th day of August, 2017.

UNFINISHED BUSINESS:

**A. NON-EXCLUSIVE PROPERTY ATTACHMENT LEASE AGREEMENT -
POINT BROADBAND**

Commissioner Stephen Webber made a motion to approve the non-exclusive property attachment lease with Point Broadband, LLC and to authorize the Mayor to execute the necessary documents. Commissioner Webber added to the motion stating that this agreement offering from the Town of Lake Lure becomes null and void, if said agreement does not have authorized signature approvals from both parties within thirty days of the date of Town Council authorization, or a written time extension has not been received from the Town Manager prior to the thirty day period expiring. Commissioner Bob Cameron seconded the motion.

Commissioner Webber explained that he has several issues with items in paragraph 8 of the proposed agreement including the paragraph concerning termination and several subparagraphs. Commissioner Webber stated that in the beginning of the agreement “property” includes all property collectively but later in the document “property” includes only items listed. Commissioner Webber further explained that the agreement gives the lessor authority to leave the agreement if illegal activity takes place, but Commissioner Webber believes both parties should be granted the same authority.

Following discussion, Commissioner John Moore made a motion to amend the motion to approve the contract with the condition that Commissioner Stephen Webber, Attorney William Morgan and Town Manager Ron Nalley review the agreement and make necessary modifications as mentioned by Commissioner Webber prior to the agreement being executed. Commissioner Bob Cameron seconded the motion to amend. The motion to approve the non-exclusive property attachment lease with Point Broadband, LLC with the condition that Commissioner Stephen Webber, Attorney William Morgan and Town Manager Ron Nalley review the agreement and make necessary modifications mentioned by Commissioner Webber prior to the agreement being execute and to authorize the Mayor to execute the necessary documents. This agreement offering from the Town of Lake Lure becomes null and void, if said agreement does not have authorized signature approvals from both parties within thirty days of the date of Town Council authorization, or a written time extension has not been received from the Town Manager prior to the thirty day period expiring was approved as amended 4-0.

NEW BUSINESS:

A. ORDINANCE NO. 17-08-08 CLARIFYING SECTION 92.999 OF THE ZONING REGULATIONS REGARDING CIVIL PENALTIES

Commissioner John Moore made a motion to approve Ordinance No. 17-08-08, clarifying Section 92.999 of the Zoning Regulations regarding Civil Penalties. Commissioner Bob Cameron seconded and the motion carried 4-0.

ORDINANCE NUMBER 17-08-08

AN ORDINANCE CLARIFYING SECTION 92.999 OF THE ZONING REGULATIONS REGARDING CIVIL PENALTIES

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

WHEREAS, Town Council finds that this amendment is neither consistent or inconsistent with the 2007-2027 Town of Lake Lure Comprehensive Plan; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 8th of August, 2017, upon the question of amending the Zoning Regulations in this respect.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE, NORTH CAROLINA, MEETING IN REGULAR SESSION AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE:

SECTION ONE. This Ordinance is enacted pursuant to the grants of authority contained in Section 160A-381 of the North Carolina General Statutes.

SECTION TWO. Section 92.999 of the Zoning Regulations of the Town of Lake Lure, concerning ENFORCEMENT AND PENALTIES, is hereby amended as follows:

Section 92.999 ENFORCEMENT AND PENALTIES

(E) Civil Penalties

- (3) Payment of Civil Penalties. The schedule for civil penalties shall be set forth in a fee schedule maintained by the Town Clerk. For each day a violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalties. For each additional and separate offense, the

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citation amount for the same violation shall be twice the amount as the last citation as set forth in the fee schedule.

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

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 zoning violations.

SECTION SIX. This Ordinance shall be in full force and effect from and after its enactment.

Enacted this 8th day of August, 2017.

NEW BUSINESS:

B. ABC BOARD MEMBER APPOINTMENT

Commissioner Stephen Webber stated that both candidates being considered for appointment to the ABC Board are well qualified for the position, but he would like to nominate MaLee Keller as an honorary action to fill the remainder of her husband's term. Council members voted by written ballot. Commissioner Stephen Webber made a motion to appoint MaLee Keller to the ABC Board to fill the unexpired term of William Keller which ends on December 31, 2018. Commissioner Bob Cameron seconded and the motion carried 4-0.

NEW BUSINESS:

C. FISCAL YEAR 2017-2018 GENERAL FEE SCHEDULE REVIEW

Town Manager Ron Nalley stated that during the fiscal year 2017-2018 budget review process Council asked that Town staff evaluate the General Fee Schedule and provide any recommendations for changes. Town staff completed its review of the Town's fee schedule and has compared it to fee schedules from several other municipalities across the State. Staff also

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determined the actual costs associated with specific tasks to ensure that the current fee schedule is satisfactory and recommends changes to the trash disposal fee, the hourly labor charge for the Town Manager, and the CD/DVD fee for public records.

Commissioner Mary Ann Silvey made a motion to amend the General Fee Schedule as follows:

- increase the trash disposal fee for events in Morse Park and at the Gazebo from \$189 to \$200
- To decrease the hourly labor charge for the Town Manager for public records research and reproduction from \$75 to \$65
- To decrease the fee for CD/DVDs for public records reproduction from \$5 per disc to \$1.25 per disc

Commissioner Bob Cameron seconded and the motion carried 4-0. Commissioner Cameron asked that Town staff insure that the fee schedule for fire inspections is being followed based on square footage instead of being charged at a flat rate.

CLOSED SESSION

Commissioner Bob Cameron made a motion to enter into Closed Session in accordance with G.S. 143-318.11(a) (5) for the purpose of discussing property acquisition. Commissioner Stephen Webber seconded and the motion carried 4-0.

While in Closed Session Council discussed property available for purchase by the Town and directed the Town Manager to determine the cost of the properties discussed and provide Council with options for funding potential purchase of the property.

Commissioner Bob Cameron made a motion to leave Closed Session. Commissioner Stephen Webber seconded and the motion carried 4-0.

ADJOURN THE MEETING

With no further business, Commissioner Stephen Webber made a motion to adjourn the meeting at 7:35 p.m. Commissioner Bob Cameron seconded and the motion carried 4-0.

ATTEST:

Andrea H. Calvert,
Town Clerk

Mayor Bob Keith