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Town of Lake Lure

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Minutes of the Regular Meeting of the Zoning and Planning Board

Tuesday, June 16, 2009

Lake Lure Municipal Center

Chairman Washburn called the meeting to order at 9:34 a.m.

ROLL CALL

Present: Dick Washburn, Chairman
Tony Brodfuhrer
Bill Bush
Paula Jordan
Donnie Samarotto
Russ Pitts, Council Liaison

Also Present: Shannon Baldwin, Community Development Director
Chris Braund, Town Manager
Mike Egan, Legal Counsel
Amos Gilliam, Planner/Subdivision Administrator
Sheila Spicer, Zoning Administrator, Recording Secretary

APPROVAL OF THE AGENDA

Mr. Brodfuhrer made a motion to approve the agenda. Mr. Bush seconded the motion and all were in favor.

APPROVAL OF THE MINUTES

Ms. Jordan asked that the minutes of the May 19, 2009 meeting be amended to reflect that, while she did praise the efforts of the Lure Ridge subdivision to screen the roads from view, she expressed concerns over how well the development would be screened once houses are built. Mr. Bush asked that the minutes also be amended to reflect that George Pressley stated he was the one to not want a survey done during the Residential Vacation Rental Stakeholder Committee meetings, not Commissioner Pitts as Jocelle Allen had indicated.

Mr. Brodfuhrer made a motion seconded by Ms. Jordan to approve the minutes of the May 19, 2009 regular meeting as amended. The motion passed unanimously.

OLD BUSINESS

(A) Review Regulations Pertaining to Residential Vacation Rentals (formerly Single Family Dwelling-Vacation Rentals) and Make a Recommendation to Town Council

Ms. Jordan discussed the fact that the sunset clause included in the draft regulations pertaining to Residential Vacation Rentals (RVR) is the key issue causing so many concerns with some of the citizens. She asked Mr. Egan what issues would be involved if the sunset clause was removed then added again at a later date if needed. Mr. Egan pointed out that RVRs would be considered a lawful use if the sunset clause is removed. He stated Town Council could amend the regulations at a later date to prohibit them, but all existing RVRs would be considered a nonconforming use and could be continued indefinitely unless an amortization period is added. He cautioned there is no case law indicating whether vacation rentals can or cannot be amortized. Commissioner Pitts stated the reason Town Council has recommended to have the sunset clause instead of amortizing is to allow for the addition of RVRs during the sunset period in the hopes that the regulations will work and RVRs will be allowed to continue after the sunset period. Mr. Bush asked how it could be made clearer to the citizens that the intent is to make the regulatory program work so that the sunset clause will eventually be repealed. Mr. Egan stated he doesn't feel it can be made any clearer and stated the sunset provision gives the Town the greatest flexibility.

Mr. Brodfuhrer thanked Mr. Egan for all the work he has done on this project and thanked Mr. Gilliam for compiling the summary of the project with Staff Report and Recommendation included in the Board's packet. He also thanked Tom Cox and the other members of the Wake Up Lake Lure (WULL) citizens group for their objective analysis of the May 22, 2009 draft of the proposed regulations. This analysis was previously emailed to the Board members by Mr. Cox.

Mr. Bush stated there are concerns over the make-up of the RVR Stakeholder Committee and asked Mr. Gilliam to discuss the membership of that committee. Mr. Gilliam responded that Town Council appointed 19 citizens of Lake Lure with varying interests in vacation rentals. He pointed out that there originally were not enough members to serve on the committee, so Town Council had to delay the appointments for one month so more applications could be received. Mr. Gilliam assured there was never an intent to have a biased group serving on the committee as has been accused. Mr. Brodfuhrer mentioned that, while it was never the intent to have a biased group, there were more people on the committee who were against vacation rentals than those who were in favor of them.

Mr. Egan pointed out the June 11, 2009 draft of the proposed RVR regulations included in the Board's packet. Mr. Brodfuhrer stated he feels this version addresses many of the concerns raised by Mr. Cox in his email. Mr. Baldwin asked if the Board could take a

short break to give staff an opportunity to provide the members of the audience copies of this latest draft. The Board chose to go to the next agenda item and come back to this item later.

(B) Discussion Pertaining to Performance Guarantees

Mr. Gilliam directed the Board's attention to a table in their packet that outlines the concerns previously raised by the Board and Town Council concerning surety bonds and his response to those concerns. He stated that most communities are still using surety bonds as a performance guarantee option for major subdivisions, but these communities are studying ways to either further regulate these bonds or not allow them at all. According to Mr. Gilliam, Richard Ducker of the University Of North Carolina School Of Government advised during a recent subdivision workshop that stricter procedures are needed for surety bonds.

Mr. Gilliam asked the Board for further input. Chairman Washburn suggested requiring larger projects requesting performance guarantees to be phased. Mr. Gilliam responded he did not find any other jurisdictions that require that, but he could look into drafting language that requires it. Mr. Bush asked why surety bonds pose a greater risk. Mr. Gilliam stated surety bonds are backed by insurance companies and could prove more difficult if payment of the bond is required. Mr. Bush then asked what the advantages of surety bonds are. Mr. Gilliam stated they are cheaper for the developer. Mr. Bush asked if a developer can use more than one bond for each project. Mr. Gilliam stated bonds can be spread out among different bonding companies. Ms. Jordan asked if recent problems other jurisdictions have encountered with surety bonds have been caused by the economic downfall or an isolated case of fraud. Mr. Gilliam responded that developers are having difficulty completing projects due to the fact that lots are not selling. He pointed out that the problems with the Grey Rock surety bonds were the cause of a fraudulent bonding company, which is why the Town needs to institute a contractual procedure and a review of financial institutions when accepting surety bonds. According to Mr. Gilliam, Mr. Ducker advised that towns are not required to complete infrastructure installation if the funds for bonds are not available. He also stated plat approval can be voided if no lots have sold in a subdivision with a surety bond that is unavailable.

Ms. Jordan suggested putting a cap on the amount that can be bonded with an individual bonding agency. Mr. Brodfuhrer also suggested increasing the amount that must be guaranteed. He asked if the current amount of 1.25% of the estimated cost of the infrastructure should be increased to 1.5%. Mr. Gilliam stated Luther Smith of Luther Smith and Associates has advised requiring at least 1.5% or 2%. Chairman Washburn again suggested requiring smaller phases for large developments. Mr. Egan mentioned that some communities place a cap on the amount of a development that can be bonded. This would ensure that larger developments only bond smaller phases of the project. He also mentioned that letters of credit are safer and could be allowed in greater amounts.

Commissioner Pitts asked if there is a way to put the risk back on the developer if a surety bond fails. Mr. Egan responded by again pointing out the Town is not required to

complete the infrastructure for a development if the funds from a performance guarantee are unavailable. Mr. Baldwin did remind that, especially in the case of offsite sedimentation that may potentially reach the lake, the Town could be required to bear the costs of completing work left unfinished by a developer.

John Cloud a developer in the audience stated there are communities in other areas that have done extensive research and have good programs in place that could offer guidance to the town. Mayor Jim Proctor, also in the audience, pointed out that there are currently no mechanisms in place to compel a developer to complete a project in the event that there is no final plat with a performance guarantee. He suggested requiring that erosion control measures be bonded for all projects. He also suggested requiring that a certain percentage of the infrastructure be completed prior to granting final plat approval to ensure a developer does not abandon a project after lots have sold.

Mr. Gilliam assured the Board he will continue to research this issue and how other communities are dealing with these concerns. Mr. Egan also offered to help with this research since he recently assisted Polk County with similar issues.

(A) Review Regulations Pertaining to Residential Vacation Rentals (formerly Single Family Dwelling-Vacation Rentals) and Make a Recommendation to Town Council

Mr. Egan went over the latest draft of the proposed regulations and discussed the revisions that have been made. These revisions were outlined in the following memo, also included in the Board's packet:

MEMORANDUM

To: Zoning & Planning Board
From: Michael Egan, Community Development Attorney
Date: 11 June 2009
Subject: Residential Vacation Rental Ordinance

Two alternative drafts of the Residential Vacation Rental Ordinance accompany this memorandum. The first, dated 22 May 2009, incorporates minor changes to the 14 May draft as directed by this Board at its regular meeting of 21 May 2009. These changes, which are highlighted in the attached draft, are two: (1) revision of the definition of resort in Section Three; and (2) additional language in Section Eighteen making it clear that if residential vacation rentals are eventually prohibited pursuant to the sunset provision, they shall not be entitled to legal nonconforming status.

The second draft, dated 11 June 2009, was developed, with the assistance of the ad hoc working group, in light of, and in response to, the continuing opposition to this Ordinance. There has been some restructuring of the ordinance in the hope of clarifying

the applicable requirements for the three permitting / licensing schemes. Section One has also been tweaked to refine the purposes and findings of the ordinance.

Most of the substantive changes relate to our desire to draw a bright line, for the purpose of this ordinance, between detached single-family dwellings and other uses under the Zoning Regulations. This line was implicit under the previous draft, particularly with regard to the temporary use permit requirements for single-family residential districts. Language has been added in the alternative draft to make the distinction explicit in that context and to carry it over into the remaining zoning districts by restricting the definition of residential vacation rental to single-family dwellings. By doing this we are able to delete the exception granted to resorts which proved troubling to some Board members.

There are only three substantive changes from the 22 May draft:

92.005. The definition of residential vacation rental has been modified to exclude multi-family dwellings and duplexes (except for those located in the single-family zoning districts). The definition of resort has been deleted as no longer significant.

92.042(B). Resorts have been deleted as an exception. A new exception has been created for duplexes where the owner of the duplex lives in the other unit on the property.

92.042(I). Text has been added to clarify that each residential vacation rental, not otherwise excepted, must have an operator.

In my opinion both of these ordinances are consistent with the Town's Comprehensive Plan and with the policy directives given the Board by Town Council.

Suggested Motion

I move the Board to adopt the Staff Report and Recommendation as its own written report and recommendation and to recommend that Town Council enact the [22 May 2009 or 11 June 2009] draft of the Residential Vacation Rental Ordinance."

Teresa Alexander, a member of the audience who lives on Angel of the Lake Road, stated she is a realtor in Town and recently lost a sale because a young couple was apprehensive about purchasing a home without assurances they would be allowed to use the home as a vacation rental. She mentioned that these regulations will affect the resale value of all homes in Lake Lure.

Debbie Nance of 178 Mark Twain Drive addressed the Board and stated she purchased her home in 2003 with the intent of using it as a vacation rental. She also stated she will not be able to meet her financial obligations if she is unable to use the house as a vacation rental and mentioned that the house has been on the market for one year without any offers. She pointed out that the Board members were appointed to represent the community as a whole.

Ms. Jordan reminded the audience that there are just as many concerns for people who do not use their homes as vacation rentals. She also reminded those who do rent their homes that they can control the outcome of the RVR program by ensuring all regulations are abided by and encouraging others to do the same.

Former Commissioner Jeanine Noble stated she thought the purpose of this meeting was for the Board to review the proposed regulations. She mentioned there are a lot of rumors around town and stated nobody is trying to shut down RVRs, only regulate them. She pointed out that there are homeowners who purchased their homes to rent out and those who purchased their homes to live in and both have rights.

Mr. Cloud stated the economy is in a meltdown and the proposed regulations with the sunset clause have essentially stopped the sale of property in town. He suggested trying the regulations for one year without the sunset clause.

Nancy McNary, a member of the audience who serves on the Board of Adjustment, stated everyone will get a permit to use their home as a vacation rental if there is no sunset clause just so they can get the status of nonconforming use if RVRs are later banned.

Tyrone Phillips, a member of the audience who served on the stakeholder committee, praised the latest draft of the proposed regulations. He stated anyone who has an issue with not being able to use their home for a particular use should discuss that with the agent they purchased their home from.

Mr. Cox stated he was disappointed that there is another version of the proposed regulations that he was not aware of. He also stated he is disappointed that he received no response from the comments that were made from the WULL citizen group about the previous draft. He asked for more time to review the June 11, 2009 draft of the proposed regulations. Ms. Jordan reminded that one of the concerns with vacation rentals is homes being used by more people at one time than the home was designed for. She stated the purpose of the inspections required by the proposed regulations is to ensure the structure can handle the proposed amount of use.

Mr. Brodfuhrer moved that the Board adopt the Staff Report and Recommendation and to recommend that Town Council enact the June 11, 2009 draft of the Residential Vacation Rental Ordinance. Mr. Bush seconded the motion.

The Board agreed to allow Carole McKay, a member of the audience, to address the Board since she was preparing to speak when the motion was made. Ms. McKay referenced section 2 paragraph C of the proposed regulations and asked if any of the Board members have inspected any RVRs in order to give them the authority to make that statement. She stated her home in Rumbling Bald Resort has more of a negative impact on the neighboring RVR due to ongoing construction. She also stated various inspectors with Rutherford Environmental Services have said it is harmful to septic leach fields to pump a septic tank on a regular basis. Ms. McKay also feels the requirement for

a 24 hour contact for RVRs is unfair. She stated homeowners are required to call the police when there is a problem with a full-time resident and the same should be true with a vacation renter.

The Board voted on the previous motion and all were in favor.

Mr. Egan pointed out that a copy of the June 11, 2009 draft of the proposed regulations was sent to the Town's website administrator on June 11, 2009 and again on June 12, 2009. He stated the draft was still not available on the website at the time of the meeting; however, he had previously emailed a copy to the attorney representing the WULL citizen group.

Mr. Braund asked if and when the comments from the WULL citizen group would be addressed. Mr. Brodfuhrer stated those comments should be addressed by Town Council since the Board has already made their recommendation.

(C) Discuss Amended Regulations Pertaining to Fabric Structures

Ms. Spicer stated the Board had provided guidance on how fabric structures should be handled by outlining certain concerns and pointed out that the memo included in the Board's packet attempts to address each of these concerns. She also pointed out that her research has revealed no other jurisdictions that address fabric structures in their zoning regulations; however, they do address temporary uses.

Mr. Brodfuhrer asked what criteria Town Council bases its approval on for fabric structures that exceed 2000 square feet. Mayor Proctor responded there are no set criteria. He stated Town Council wants to be involved in the approval of larger fabric structures, but agrees with Ms. Spicer that the Zoning Regulations may not be the best place to address these types of structures. Ms. Jordan replied that some aspects should apply such as setbacks and land disturbance. Ms. Spicer reminded the Board that all fabric structures must comply with the state fire code which mandates that all fabric structures be set back a minimum of twenty feet from all property lines and buildings. She stated the Board could recommend stricter setbacks if these are insufficient. Ms. Jordan responded that Fire Chief Ron Morgan should be asked for advice on that.

Commissioner Pitts also pointed out that these structures do not have to be regulated in the Zoning Regulations. He also suggested the duration the structure is to be erected could be regulated regardless of size. Ms. Spicer reiterated that fabric structures could be removed from the Zoning Regulations, but the use of the land would still be regulated. Ms. Jordan stated she is still concerned about land disturbance being made for fabric structures. She feels standards governing land disturbance should be part of the regulations that pertain to fabric structures or at least a reference made to other regulations that would apply.

Mr. Egan advised that a special use permit could be required for fabric structures that exceed a certain size or are for a certain use. He stated the temporary use of land for

commercial activities should be addressed in the Zoning Regulations. He pointed out that there are design criteria for new commercial structures but none for fabric structures used for commercial purposes. Ms. Spicer suggested regulating these uses for all temporary structures, not just fabric structures.

Mr. Baldwin stated staff will use the comments the Board has made to draft revised regulations for the Board to review at a later date.

NEW BUSINESS

None

ADJOURNMENT

Mr. Brodfuhrer made a motion seconded by Mr. Samarotto to adjourn the meeting. The motion passed unanimously.

The meeting was adjourned at 11:45 a.m. The next regular meeting is scheduled for Tuesday, July 21, 2009 at 9:30 a.m. at the Lake Lure Municipal Center.

ATTEST



Richard Washburn, Chairman



Sheila Spicer, Recording Secretary