



Minutes of the Regular Meeting of the  
Zoning and Planning Board

Tuesday, August 20, 2013

Lake Lure Municipal Center

**ROLL CALL**

**Present:** Thomas M McKay, Chair  
Charlie Ellis  
John Wisniewski  
John Moore, Town Council Liaison

**Absent:** Bruce Barrett  
Ric Thurlby

**Also Present:** Shannon Baldwin, Community Development Director  
Sheila Spicer, Zoning Administrator  
Stephen Webber, BOA Chairman  
Mike Egan, Town Attorney  
Michelle Jolley, Recording Clerk

Chairman McKay called the meeting to order at 9:30 a.m. and gave the invocation.

**APPROVAL OF THE AGENDA**

**Mr. Wisniewski made a motion to approve the agenda. Mr. Ellis seconded and all were in favor.**

**APPROVAL OF THE MINUTES**

**The minutes of the July 16, 2013 regular meeting were unanimously approved upon a motion made by Mr. Ellis and seconded by Mr. Wisniewski.**

Mr. Baldwin advised the agenda item (B) under New Business would not take very long and asked to start with 5 (B).

## NEW BUSINESS

### **(B) Review Metal Structures Amendment and Recommendation to Town Council**

Mr. Baldwin gave an overview of the Metal Structures Amendment and recommendation to Town Council.

Mr. Ellis asked if this will conflict with primary streets. Ms. Spicer answered no metal wall should be visible to primary streets or adjoining properties in commercial districts. Brief discussion held.

**Mr. Ellis moved the Board to find that the proposed ordinance is consistent with the Comprehensive Plan and to recommend Town Council adopt an ordinance concerning fabric and metal structures, permitting such structures in any zoning district provided they are not within site distance from any primary streets or adjoining residentially zoned property. He further moved that the reference to primary streets in draft ordinance should be consistent with the defined term in the zoning regulations. Mr. Wisniewski seconded and all were in favor.**

## OLD BUSINESS

### **(A) Consider Amendments to the Zoning Regulations Pertaining to Residential Vacation Rentals**

Gary McCall, property owner at 420 Boys Camp Road, presented himself and explained that he does not agree with making any changes to the residential vacation rental ordinance. He stated he does not own and will not own a vacation rental. He asked the Board why they are looking to make changes to the regulations and if there have been any problems with the current regulations in the past. He urged the Board not to change anything if there have been no problems in the past. Discussion ensued.

Stephen Webber, Chairman for the BOA, gave an overview of the recommended changes to the residential vacation rental ordinance. He made a recommendation to the Board to leave as a conditional use permitting process and delete the Development Review Committee step from the process because it is not needed. Mr. Egan noted he could change this and it would be an easy fix. Discussion held.

Chairman McKay asked Ms. Spicer what the process is for registering with the TDA. Ms. Spicer explained to Chairman McKay how the process works. Chairman McKay asked if applicants are required by the Town's regulations to have read the NC Vacation Rental Act. Ms. Spicer stated that it is not a requirement by the regulations. Mr. Egan pointed out that it could be added to the statute that applicants have to comply with the NC Vacation Rental Act. He further stated Ms. Spicer would not have to police this, but if it came about that someone was not in compliance with the NC Vacation Rental Act, there could be some form of disciplinary action against them or she could make a referral to someone who could enforce it at state level. Mr. Baldwin explained he would rather the

ordinance state that the applicant has read and understood the NC Vacation Rental Act, rather than trying to make Ms. Spicer an expert in state law. Brief discussion held.

**Mr. Ellis made a motion to move the Board to find both ordinances concerning residential vacation rentals are consistent with the 2007-2027 Town of Lake Lure Comprehensive Plan for the reasons set forth in the preamble of such Ordinance. He further moved the Board to recommend that the Town Council determine which of these Ordinances best serves the public interest and to enact that Ordinance. Mr. Wisniewski seconded and all were in favor.**

## NEW BUSINESS

### **(A) Review Lake Lure Properties Agreement and Recommendations to Town Council**

Mr. Baldwin presented an overview of the proposed Concession Agreement between Lake Lure Tours and the Town of Lake Lure. He stated it is a 10 year agreement that will affect the Marina and the Beach properties specifically. He mentioned staff has reviewed four documents; (1) 2007-2027 Comprehensive Plan (adopted by Town Council June 2007); (2) Town Center Master Plan, Phase I (adopted by Town Council July 2012); (3) Market Assessment & Brand Development Project (adopted by Town Council April 9, 2013); and (4) MSTA Study and Recommendations (adopted by Town Council May 21, 2013) and analyzed the agreement in light of these four documents. He stated overall staff determined this agreement was consistent relative to these four documents and there were no inconsistencies. He mentioned there were lots of plan elements reviewed that showed neither consistency nor inconsistency with the agreement. Mr. Baldwin noted staff did not get involved in any technical issues that may need to be considered, such as the 10 year framework of this document, or ways either party can cancel the agreement.

Mr. Ellis commented that he agreed that the agreement was generally consistent with the town's planning documents, he had some concerns relating to the business perspective he wanted to bring to the Board's attention. His first concern was with severability. He noted there are presently separate contracts for the Tour Boats and Marina/Beach which could allow more than one operator. He stated the Town has the authority to terminate any of those contracts at any time. He pointed out the proposed contract is a ten year hard contract with no rights to terminate except by default.

Mr. Ellis stated he believes the proposed consolidated agreement does fall short from a planning perspective in some areas because of a few inconsistencies. He mentioned the need for boat slip facilities and having facilities universally accessible per the Comprehensive Plan. Related to the Town Center Master Plan, he stated that there is no reference to the picnic area in the proposed agreement. He stated the area is well maintained by the town and is under utilized. He felt that opening the picnic area up to make it easily accessible can be a step in improving connectivity. His next concern was with the Market Assessment and Brand Development. In regards to element C, removing excess signage at the beach, he noticed there was a commitment for a new entrance to the

Beach that will be appropriately branded with the new standards but he did not see a commitment to remove the excess signs. Mr. Ellis mentioned element D of the Market Assessment and Brand Development states we're suppose to reexamine policies related to lake use but it doesn't specify which policies are supposed to be reexamined. He stated he would argue that it's inconsistent with the market assessment because of this. His last concern regarding the MSTA study is on element A, which talks about traffic flow and on-street parking. He stated he feels like there is an opportunity to increase public parking at the ABC store next to the picnic area. He further stated he thinks the picnic area could be connected to the Town Center and advocated that the existing bridge should be removed and not repaired. He pointed out the Town Center Master Plan shows the bridge as being removed and a new bridge connecting towards the end of the peninsula where a gazebo was being considered at one point.

Mr. Ellis noted the present agreement shows the Concessioner will get two free boat slips and pay for four. The proposed agreement allows the Concessioner to get 10 free, which is a significant loss for the Town. He noted the current agreement allows the Concessioner to sell boat permits and receive a 5% commission and the proposed agreement allows a 10% commission of boat permit sales. He stated he finds it interesting that the tour boat agreement only requires the gross revenues from that operation to contribute above and beyond what the Town gets. There is a 1/2 percent charitable contribution which the Concessioner is supposed to make to the Town for a specific designated charity. Mr. Ellis pointed out this is noticeably absent. He noted we are clearly going to be losing some revenues on the permitting side. Mr. Ellis stated he would argue that the only capital improvement being made is a renovation of the gazebo next to the beach house at Pool Creek. He mentioned the one big positive we have from this agreement that we do not have in the current agreement is an agreement by the Concessioner to open up the Beach on a year-round basis and off-season at no charge to the public. He stated there is a new entrance proposed that will be consistent with our architectural style that the Concessioner would pay for. He mentioned beyond that the vendor commitment over the life of a 10 year contract is largely labor. He stated very little money is going to be invested and we're giving one company a monopoly to run what could be three separate concessions that are currently on a year-to-year basis for an exclusive period of 10 years. Mr. Ellis commented that he is not opposed to this but he believes it should be split up and we should come up with a standard set of general rules and provisions that relate to the concession and lease of Town property. He noted an attachment could be added to that standard agreement that talks about how we want the Beach, the Marina, and the Tours to be operated. He stated he believes the agreement acts more like a lease rather than a concession agreement. Mr. Ellis mentioned he would like to see a black line document which will show what's been added and what's been deleted. Mr. Ellis mentioned that someone, Concessioner or from the town, should explain why this new agreement is better than the existing agreement.

Chairman McKay pointed out he wants to see improvements to the Beach and his biggest concern is that he does not want anything that's in the Master Plan or any new plans to get in the way of the 10 year agreement that we can't get out of. Discussion was held.

Mr. Egan pointed out there is a binding arbitration provision in the agreement that he recommended be taken out because, if not, we will basically be giving up the right to appeal in court.

Chairman McKay suggested having Town staff, Mr. Ellis, and a representative of the Concession Agreement meet and discuss the proposed agreement.

Mr. Baldwin suggested having all concerns with the proposed agreement be outlined and written down to give to Town Council to take into consideration when reviewing this agreement. Mr. Moore asked if Parks & Recreation and Lake Advisory Board have looked at this yet. Mr. Baldwin responded it has been sent to them but he does not know if they have reviewed it but they were scheduled to. Mr. Moore stated it would be good for the Town Council to have the Zoning & Planning Board's comments prior to the next meeting to serve as a starting point. Mr. Baldwin commented that the concerns that have been raised can be bulleted out and put in a memo from the Chairman to give to Council.

Chris Braund, Town Manager, stepped into the meeting and presented an overview of the proposed Concession Agreement. Mr. Braund stated midway into the 10 year agreement a number of factors in the environment had changed enough to cause that agreement to no longer be as effective as it needed to be. He stated some opportunities and desires came about, such as opening the Beach up year-round. He mentioned drafts were made and sent to the Parks & Recreation Board, Chris Callahan, and Town Council and this has been ongoing for several months. He mentioned that the two agreements were combined into one and modified to make a cleaner document to cover all three areas of operation. Mr. Braund noted there is an option to consolidate the two agreements and staying on the current schedule and letting the remaining four years go out. After that time, this can be revisited. Mr. Braund mentioned if this is the Town's decision, he believes the Concessioner will take some things off the table and we would have to decide if we are willing to reflect on letting go of opening the beach up for the remaining months of the year. Is that something we would be willing to let Town staff do each day? This takes us back into renegotiations. Discussion followed.

Mr. Braund stated he is open to any direction that the Council wants to provide with guides from the Boards. Chairman McKay suggested that staff and the Town Manager meet with the Concessioner to get more clarification on where we're going and what we're trying to do. He stated he would like to be in the meeting as well. Mr. Braund mentioned that George Wittmer would be willing to meet and he would also be available to meet. He stated he would be happy to set up those meetings with anyone that has an interest and would like to attend them. Discussion ensued.

**Mr. Ellis made a motion to ask staff to prepare a memo outlining the concerns and the questions that should be reviewed by Council as far as the proposed consolidated Concession Agreement. Mr. Wisniewski seconded and all were in favor.**

#### **ADJOURNMENT**

Upon a motion by Mr. Wisniewski and seconded by Mr. Ellis, the meeting was adjourned at 11:40 a.m. The next regular meeting is scheduled for Tuesday, September 17, 2013 at 9:30 a.m. at the Lake Lure Municipal Center.

ATTEST

  
Thomas M McKay, Chair

  
Michelle Jolley, Recording Clerk