



Minutes of the Regular Meeting of the
Zoning and Planning Board

Tuesday, July 18, 2017

Lake Lure Municipal Center

ROLL CALL

Present: Thomas M McKay, Chair
Bruce Barrett
Charlie Ellis
Jonathan Hinkle
Norman McGlohon
John Moore, Council Liaison

Absent: N/A

Also Present: Shannon Baldwin, Community Development Director
Brad Burton, Code Enforcement Coordinator
Clint Calhoun, Environmental Management Officer
Michelle Jolley, Recording Secretary

The meeting started at 9:32 a.m. Chairman McKay led the pledge of allegiance and Mr. Barrett gave the invocation.

APPROVAL OF THE AGENDA

Mr. Barrett made a motion to approve the agenda as amended and all voted unanimously.

APPROVAL OF THE MINUTES

Chairman McKay pointed out that Mr. Barrett made the invocation, not Commissioner Moore. Mr. Ellis noted Under Section B, Mr. Barrett voted in favor. It should be changed to state that Mr. Hinkle did not vote in favor.

Mr. Barrett made a motion to approve the minutes of the June 20, 2017 regular meeting as amended. Mr. McGlohon seconded. All voted in favor.

OLD BUSINESS

None

NEW BUSINESS

- A. Civil Penalties – per Town Council, the current fee schedule is based only on the number of offenses, not the severity of the offense. Council asked the Zoning and Planning Board to study civil penalties charged for zoning violations and consider recommending revisions to the fee schedule.**

Mr. Baldwin stated Town Council tasked the ZPB to study Civil Penalties. Because of the numerous and diversified types of possible violations, staff feels a civil penalty schedule based on degree or severity of the violation would be extremely complex to develop and even more difficult to administer. He recommended very clear language, listed below, for review and recommendation that clarifies civil penalty citation amounts double for each additional, separate offense. The underlined language is being proposed to accomplish this.

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 and separate offense and subject to additional civil penalties. For each additional and separate offense, the citation amount for the same violation shall be twice the amount as the last citation as set forth in the fee schedule.

Below are the Civil Penalties for Zoning Violations as they appear in the Fee Schedule:

Civil Penalties for Zoning Violations	
Notice of Violation	\$0
1st Citation	\$40
2nd Citation	\$80
3rd Citation	\$160
4th Citation	\$320

Mr. Calhoun pointed out the civil penalties, under his department, are a little different because the local program has rules dictated by the State and their ordinances. He stated he is allowed to assess civil penalties up to \$5,000 per day. He explained that there are lists of different violations for different things which all carry their own potential number range for a civil penalty. It's not uncommon to have a civil penalty that goes beyond \$5,000 if different values are assessed; however, each penalty cannot go beyond \$5,000. He noted that very seldom does he see a small

residential project receive a maximum penalty. The purpose of civil penalties are to gain compliance.

Mr. Calhoun explained the process he uses for issuing civil penalties. Once a violation is found, he issues a letter. He noted that a notice of violation letter for a new violation must be hand delivered. A Notice of Violation can accompany a civil penalty under erosion control regulations. He mentioned that generally the largest amount of a civil penalty is around \$2,000 for a residential project. He stated the Attorney General recommends that civil penalty fee schedules not be published. He noted he follows the Attorney General's recommendations and relies on the Attorney General if they run into any issues. He pointed out that there have been a few changes from the State regarding approaches and how activities should be conducted that he has been working on. He explained that the civil penalty fees are high because of environmental impact on the lake with noncompliance. He noted his department does not keep the civil penalties. He stated there's been very few civil penalties issued. He explained that the justification for assessing penalties is to help keep the lake as clean as possible. He mentioned that the State oversees town project to make sure that compliance is gained. He noted the Town has also received letters for violations but the Town has made compliance before receiving a civil penalty. They learn of these violations by the State's Inspection Report and the Town follows the same process.

Mr. Burton conveyed he deals with zoning ordinances and code enforcement nuisance based ordinances. He stated he assesses civil penalties after intent that someone absolutely will not comply with regulations after numerous attempts to allow that person time to comply. The Town Manager or Attorney is empowered to take immediate action based on violations that are a perceived eminent threat. He stated in his 20 years code enforcement experience, he has only ever issued one civil penalty. He noted he must take action immediately once a violation is brought to his attention.

Mr. Baldwin stated the fee schedule in place protects politically but also is created to gain compliance; it was never meant to be a money maker. The impact of the fees doubling usually calls attention to try and gain compliance for violations. Language has been added in the text that fees will double every day an offense is cited.

Mr. Barrett mentioned that the proposed civil penalties only cover zoning violations and not erosion control violations. Mr. Baldwin explained that Council only asked the Board to look at zoning violations. Mr. Calhoun noted the sediment and erosion control regulations do discuss civil penalties, which models the State's (NCDENR) regulations. The maximum civil penalty allowed to assess per day is \$5,000.

Mr. Calhoun felt the system in place is working to gain compliance and stated it is very seldom he has to assess a civil penalty. There are no current outstanding erosion control civil penalties. Mr. Ellis referenced Section 92.999 stating that the bulk of verbiage deals with penalties related to cutting down trees. He asked if trees fall under zoning or erosion control regulations. Mr. Calhoun stated trees are not included in the erosion control regulations but have fallen under him as the tree protection officer. Chairman McKay suggested revisiting the tree regulations at a later

time. Commissioner Moore stated he would bring this up at the next Town Council meeting and ask to commission this to the Planning Board.

Mr. McGlohon moved staff place this amendment in an ordinance form and forward to Town Council for adoption. He further moved that the Board finds this amendment neither consistent nor inconsistent with the 2007-2027 Comprehensive Plan. Mr. Barrett seconded the motion and all voted in favor.

Mr. Ellis suggested a future meeting to discuss the number of uses that are permitted by right in commercial districts. He explained that if something isn't permitted in the regulations, it is deemed prohibited. He felt staff could take a look at permitted uses in other comparable communities and compare with the Town's permitted uses to be revisited at a later time. He also felt that the regulations on the size of for sale signs on commercial property should be revisited. Shannon stated he would draft a memo of these three items for Council to review at their next meeting.

Mr. Barrett asked that Mr. Baldwin draft a memo for Town Council requesting permission to review permitted uses in commercial districts, size of for sale signs on commercial property, and provisions of zoning regulations related to tree removal on individual lots. Mr. Hinkle seconded and all voted in favor.

PLANNING PROJECTS UPDATE

Mr. Baldwin provided an update to the Board. Engineers were hired to design signs for the TDA and specifications sent to manufacturer to design and install. DOT noted the signs do not comply with the standards creating an issue between the TDA, engineer, and DOT. There were around 15 signs installed before they were stopped. The Town has agreed to pay for any additional signs in the future. Two power poles in front of Arcade Building not being used are being taken down. Seven poles to be removed in all. Underground powerlines will be placed under that parking lot to clean up the island. The Town did not get the ARC grant for the commercial corridor connector; therefore, the Town will continue to look for grant opportunities. The project to digitize old files has been completed and is very helpful. The charging station at the welcome center is on its' way. Concrete pads will be built beside the welcome center and Bob Cameron is conducting the work for this project. A minimal charge will be required for use of the charging station. A dummy unit is being used instead of a smart unit and the TDA is paying the electrical bill to Duke Energy and the installation fee. In regards to the Hodge property, Brad Burton's next step is to meet with the Town Attorney to get this issue before a judge for a ruling. The ABC Store walkway project has been RFP'd and the cost of the project is \$54,000. The Town RFP'd stamp concrete color to match sidewalks we already have for \$37,500. In regards to the Westside Connector, the road name was changed back to Old Sand Branch Road. The Town has now taken over this road and added to the Powell Bill map. Town council approved contracts to create the Morse Park Plan in addition to the recreation Masterplan to be able to ask for money in the future and a site location for future public restrooms. First meeting is tomorrow to lay out a schedule and framework and move forward with the project. The Parks and Recreation Board will review and adopt this plan at the end and then will hopefully go to Council on December 12th for adoption. Regarding the peak season parking plan, the Town will be working with the Fire

Department and Chamber to get recommendations for use of private properties, as done in the past, and possible recommendations of purchase of new properties for parking in the future. He noted they could discuss payment for parking as well.

Mayor Keith stated the Lodge on Lake Lure has asked to reapply and the Town met with them last Thursday. His take was that they would like to get the attorneys talking with each other first. Mr. Baldwin put together a hypothetical chart for the Board. He would like to get the process done while the current Council is in place, but it all depends on when the Lodge files. He stated there is still open litigation and once they file, the two appeals become moot. They're refilling for a zoning application which might cease the two appeals. Discussion ensued.

Upon a motion by Mr. Ellis and was unanimous, the meeting was adjourned at 11:15 a.m. The next regular meeting is scheduled for Tuesday, August 15, 2017 at 9:30 a.m. at the Lake Lure Municipal Center.

ATTEST


Thomas M McKay, Chair


Michelle Jolley, Recording Secretary

