

TOWN OF LAKE LURE • P. O. BOX 255 • LAKE LURE, N.C. 28746  
704/625-9983 • 704/625-9396 • FAX 704/625-8371

**MINUTES OF THE REGULAR TOWN COUNCIL MEETING HELD  
TUESDAY, AUGUST 24, 1993 AT 7:30 P.M. AT THE LAKE LURE  
COMMUNITY CENTER**

**PRESENT:** Mayor Priscilla Doyle  
Commissioner Bill Bush  
Commissioner Alex Karr  
Commissioner Max Lehner

Thomas M. Hord, Town Manager  
J. Christopher Callahan, Town Attorney

**ABSENT:** Commissioner Jack Donovan

**CALL TO ORDER**

Mayor Doyle called the meeting to order at approximately 7:30 p.m.

**INVOCATION**

Tom Hord gave the invocation.

**APPROVAL OF MINUTES**

Commissioner Lehner moved, seconded by Commissioner Karr, to approve the minutes of the July 27, 1993 Regular Town Meeting, and the minutes of the August 10, 1993 Regular Council Workshop. The vote of approval was unanimous.

<b>AUDIENCE OF CITIZENS</b>
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Mayor Doyle, on the behalf of the Council, thanked Tom Hord for his good work and contributions to the community for the past two years. August 15, 1993 marked his second anniversary as Lake Lure Town Manager.

Bill Beeman announced that the Red Cross is planning a blood drive on August 31, 1993 at the Community Center from 2-6 p.m. Mr. Beeman expressed that they needed at least 36 pints and would need more than 36 people. Beeman introduced Judy Crawford, a spoke person for the Red Cross. Ms. Crawford expressed the importance of donating blood and told that the Red Cross sponsored approximately 58 blood drives throughout the county each year.

Jean Drozdak spoke about her dissatisfaction with the enforcement of lake and boating regulations (attached copy of letter to Town Manager). Mrs. Drozdak said that on August 8, 1993, she and her family were enjoying a family outing at Lake Lure for the first time in nearly two years and Officer Michael Suthers stopped the Drozdak family boat while it was pulling her on skis. Officer Suthers gave Mrs. Drozdak a citation. She explained that Officer Suthers was never cordial nor informative and never should have issued the citation. Mayor Doyle apologized for Mrs. Drozdak's unfortunate experiences, and went on to say that Officer Suthers was a good police officer who had been complemented by others. Mrs. Drozdak's request to void a boating citation was denied. Town Attorney, Callahan explained that it was not a matter to be decided by Town Council and that it was up to the district attorney whether to enforce it or not. Callahan also said that the Town does not have control over retracting a warrent once it is issued.

<b>PROPOSALS FOR COMPREHENSIVE WATER SYSTEM MASTER PLAN</b>
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Town Manager, Tom Hord reported that two proposals had been submitted from consulting engineering firms for consideration which are McGill Associates, P. A. of Asheville and William G. Lapsley & Associates, P. A. of

## **Page - 3 Minutes of the August 24th, 1993 Regular Council Meeting**

Hendersonville (attached copy of proposals.) Mr. Hord also stated that the North Carolina Division of Water Resources has mandated that a Water Supply System Report and a Local Water Supply Plan be submitted by November 30, 1993.

Council agreed to discuss the two proposals at a workshop session when representatives of the firms can be present.

### **CERTIFICATION AS A FRANCHISE AUTHORITY TO REGULATE BASIC CABLE RATES**

Mr. Hord recommended to Council that the Town Should submit an application to the Federal Communications Commission (FCC) to be certified as a franchise authority to regulate basic cable TV and customer service rates. He explained that you must file a request for certification, on the enclosed form, by certified mail, preferably on the first available date, September 1. A certification becomes effective automatically 30 days after it is filed at the FCC unless the FCC specifically disapproves the request. When approved this qualifies the Town to regulate basic tier cable TV rates.

Commissioner Lehner moved, seconded by Commissioner Karr, to have the Town Manager file an application with the Federal Communications Commission (FCC) in order to enable the Town to regulate basic cable TV rates (attached copy of Cable IV certification form and regulations). The vote of approval was unanimous.

### **DRAFT OF LAKE LURE STREET ACCEPTANCE ORDINANCE**

Mr. Hord presented a draft copy of the Lake Lure Street Acceptance Ordinance to Council for their review to look over the standards and procedures (attached copy of draft). Council agreed unanimously to use the draft as a working copy and delay voting on the Lake Lure Street Acceptance Ordinance until the next regular meeting.

**OLD BUSINESS**

There was no old business for discussion.

**REQUEST TO USE PUBLIC PROPERTY FOR A STREET DANCE  
AND FOR A PERMIT IN ACCORDANCE WITH TITLE VI  
SECTION 63.2 OF TOWN OF LAKE LURE  
CODE OF ORDINANCES**

Mr. Hord spoke on behalf of Allan Castorr for Jimmy's Oyster Bar and Pub in a request to suspend the ordinance titled **Ordinance Governing Consumption of Malt Beverages, Unfortified Wine, Fortified Wine, Spirituous Liquor, or Mixed Beverages on Certain Public Places; Penalty,** on Saturday, September 4, 1993 from 8:00 p.m. to 12:00 midnight for the sole purpose of a street dance. The street dance will be held adjacent to the current premise which is 30 feet from building and 90 feet in length. The extension area will be roped off and security will be provided (attached copy of request).

Commissioner Bush moved, seconded by Commissioner Lehner, to accept the request and temporarily suspend the ordinance upon the guidelines of Section 2 of the ordinance and grant a permit allowing consumption of either malt beverages unfortified wine, fortified wine, spirituous liquor and/or mixed beverages for the purpose of a street dance at Jimmy's Oyster Bar and Pub to be held on Saturday, September 4, 1993 from 8:00 p.m. to 12:00 midnight. The vote was unanimous.

**RECOMMENDATION FROM LAKE LURE  
ZONING AND PLANNING BOARD  
TO REZONE JAMES A SHERRILL HEIRS PROPERTY ALONG  
U. S. HIGHWAY 64/74 FROM RESIDENTIAL TO COMMERCIAL**

Mr. Hord presented a request to Town Council from the Zoning and Planning Board to recommend that the property belonging to the James A.

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Sherrill heirs, consisting of lots 8, 9, 10, 11, and 12 along U. S. Highway 64/74, at Snug Harbor, be rezoned from residential to commercial. The Zoning and Planning Board agrees that the land currently zoned for commercial uses should be substantially utilized for this purpose before the present commercial hubs are expanded further or other hubs are developed. With that understanding, the Zoning and Planning Board recommends that the Town Council set a public hearing date to consider the rezoning of the James A. Sherrill property from residential to commercial (attached copy of request).

Commissioner Bush moved, seconded by Commissioner Lehner, to hold a public hearing on September 28, 1993 at the next Regular Council Meeting to be held at the Fairfield Mountains Bald Mountain Club to consider the rezoning of the James A. Sherrill property on Route 64/74 from residential to commercial as recommended, by the Zoning and Planning Board. The vote was unanimous.

<p><b>RECOMMENDATION FROM LAKE LURE ZONING AND PLANNING BOARD TO AMEND THE ZONING ORDINANCE TO ALLOW OFF-PREMISE DIRECTIONAL SIGNS</b></p>
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Mr. Hord presented a request from the Zoning and Planning Board to Town Council a draft of proposed amendments to the Zoning Ordinance to Allow Off-Premise Directional Signs (attached copy of request). The proposal involves amendments to two sections of the Zoning Ordinance; one to Section 1301, Definitions, and one to section 1312 Special Signs. The amendment to Section 1301 would be an addition of a definition for off-premise directional signs and would read as follows:

**Off-Premise Directional Sign:** Any off-premise sign indicating the location of or directions to a business or other activity. The sign shall not include any information or message except the name of the business or the nature of the activity, universal symbol if applicable, and an arrow indicating direction and distance to the business or activity. If a sign contains any additional message or exceeds the maximum area, it shall be considered to be in violation of this ordinance.

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The amendment to Section 1312 would be an insertion of a new subsection (5) and would necessitate the renumbering of the following subsections. The new subsection (5) would read as:

- (5) Town of Lake Lure Directional Sign. The Town of Lake Lure may erect off-premise directional signs for the benefit of the traveling public. The cost of manufacture, erection, and maintenance of the signs shall be charged to those requesting the sign at a rate established by the Town.**

**Off-premise directional signs are permitted for the following types of businesses: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; outdoor recreational areas; and establishments providing motor fuel, lodging, and/or meals for the general public.**

**Off-premise directional signs may be located at the intersection of a major thoroughfare (U.S. Highway 64/74, Buffalo Shoals Road, Buffalo Creek Road, and N.C. Highway #9) with the side street leading to the business or activity. One additional off-premise directional sign may be located at the intersection of the street leading to the business or activity with the street providing access to the establishment.**

**Off-premise directional signs shall be 18" X 48" per sign face, one sign face per directional flow of traffic, two sign faces per sign structure. Not more than two off-premise directional signs shall be permitted for the same business or activity.**

Commissioner Lehner moved, seconded by Commissioner Bush, to hold a public hearing to consider the above amendments of the Zoning Ordinance on September 28, 1993 at the next Regular Council Meeting to be held at the Fairfield Mountains Bald Mountain Club. The vote was unanimous.

**STAFF REPORTS**

Mr. Hord reported that the Finance Officer was attending a training session. He also said that the Finance Officer had been working with the auditors and would submit a report to council at a later date.

Mr. Hord announced that dredging operations should be in effect by next week.

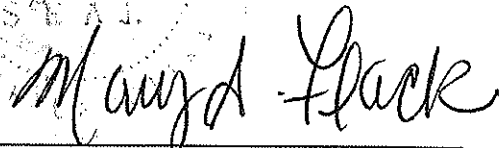
Mr. Hord also reported that the vast majority of all brush removal is now being completed on all road right-of-ways.

**COUNCIL COMMENTS**

Commissioner Lehner announced that he would like to request that a follow up be made in enforcing substandard structures.

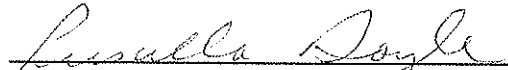
With no further items of discussion, Commissioner Bush moved, seconded by Commissioner Lehner to adjourn. The vote of approval was unanimous.

ATTEST:



A circular official seal is partially visible in the background of the signature.

Mary A. Flack, CMC



A handwritten signature in cursive script.

Mayor Priscilla Doyle

August 24, 1993

Mr. Thomas Hord  
Town Manager  
Lake Lure  
P.O. Box 255  
Lake Lure, N.C. 28746

Dear Mr. Hord;

This letter is in response to our complete dissatisfaction with the enforcement of lake/boat regulations.

Our boat was placed in Lake Lure in mid-July ,the first time in two years, by Mrs. Drozdak's brother, Dr. William T. Hendrix, Jr. He had to drive his auto to Lake Lure City to purchase a lake permit. This is contrary to previous years when this was bought at Bob's Marina. When he entered the office at Lake Lure City, a young woman along with what appeared to be her boyfriend was working in the office. Dr. Hendrix reported that it took longer than he felt necessary to obtain the permit. The permit was eventually issued several minutes later.

On August 8, 1993, Jean Hendrix Drozdak and her family were enjoying a family outing at Lake Lure for the first time in nearly two years. The lake was busy with many boats. A Lake Lure City patrol boat, Officer Souther, stopped the Drozdak family boat while it was pulling Mrs. Jean Drozdak on skis.

The procedure followed by Officer Souther has caused us a great deal of distress and concern as described below:

1. Officer Souther's unfriendly demeanor.
2. Officer Souther first stating that the boat was 10 feet from a boathouse.
3. After completing the citation, Officer Souther saying that it was the skier who was 10 feet from a boathouse.
4. The citation, however, states the boat was 75 feet from the shoreline with a wake speed greater than allowed.
5. No explanation of the citation by Officer Souther.
6. Officer Souther telling us that "the Lake Committee" does not allow him to write warnings anymore.
7. Hearing from the Town Manager, Tom Hord, on August 9th that about 75 warnings had been issued over the weekend. Ours was the only citation written.
8. Told by Tom Hord that anytime a boat is given a permit that the lake rules and regulations are given out.



9. Two weeks later on August 22, Mrs. Drozdak went to the Lake Lure City location where Dr. Hendrix purchased a boat permit. She requested a lake rules/regulations pamphlet since Dr. Hendrix did not receive it. Mrs. Drozdak asked the man working in the office (Bill Humble) for the lake's rules/regulations. He had a blank look on his face and responded, "We don't give out rules and regulations for the lake". Mrs. Drozdak went back to her car and wondered what was true! She returned to the permit office to get the man's name. After Mrs. Drozdak told the man that she was confused about this because the Town Manager told her that everyone receives the rules/regulations upon the purchase of a boat permit. Mr. Humble then looked around the counter and handed her a pamphlet entitled "Lake Regulations and Map" and said "Maybe they're in here".
10. Informed by the Town Manager, that after his questioning Officer Souther concerning his reasons for issuing the citation, Souther's response was the ticket was issued because it was a "flagrant violation". Assuming that this is a true accusation, these questions arise:
  - A. Why didn't Officer Souther immediately fully explain to us what we had done wrong?
  - B. Why after receiving the boat registration, spending a couple of minutes reviewing it, and then Mr. Drozdak asking if there was a problem, did he tell Mr. Drozdak that the boat was driven 10 feet from a boathouse?
  - C. Why upon questioning the citation did Souther state it was the skier who was 10 feet from the boathouse?
  - D. Why was citation written for 75 feet from shoreline?
11. What instruments or devices unequivocally indicate the distance a boat is from the shoreline? There is NO BUOY marker indicating a controlled area in this particular lake location. Where does Officer Souther have to be located on the lake in relationship to a boat to know the boat's distance from the shoreline?
12. Boat traffic - When there are numerous boats on the lake pulling skiers, where does a driver move the boat to ensure the skier's safety, and not violate the 75 feet from the shoreline regulation?

We believe that the aforementioned issues should be addressed by Town Council, since boat safety is a priority at all times. We appreciate and follow safety rules to the best of our ability. We would not willingly or flagrantly violate any lake regulation. Since we did not receive boat rules/regulations, how many other individuals are unaware of these?

In our opinion, this citation issuance by Officer Souther was not handled properly. Immediately upon stopping of the boat, Souther should have courteously explained why the boat was ordered stopped. Additionally, since this appears to be a judgment call since there are no measuring devices or buoys to indicate a legal violation, a warning would suffice.

Most distressing to us, was the fact that this was a family outing - Father, Mother, Daughter, Son and 2 friends - boating and skiing, without alcohol or excessive speed, or recklessly causing damage to lake owner's property.

What kind of example does Officer Souther project as a police officer in front of impressionable children? Is he "Officer Friendly" or "Officer Un-Friendly" who can give anyone a ticket? Our purpose was to travel from the middle of Buffalo Bay to our boathouse on Picnic Point, without being hit by the many "speed" boats on the lake. Just 5 minutes prior to Officer Souther stopping the boat, another boat was on course to run over our ski rope.

In conclusion, we believe that Officer Souther was never cordial nor informative and never should have issued this citation. A polite warning and explanation of the lake rules should have sufficed. If it is true that Officer Souther has been patrolling the lake for two years, he would realize that this boat was never issued a warning nor seen on Lake Lure. Mrs. Drozdak's parents have been residents since 1955, and no one has ever broken any lake rules up to this point. During this 38 year period, this boat has traveled this area without any incident. Mr. Drozdak, the boat driver, had as his primary preoccupation the safety of the skier, other boats and any shore persons. Never was the boat operated recklessly or in a dangerous manner, yet we were singled out for a ticket, while 75 other boats received warnings!

Dennis P. Drozdak

Jean H. Drozdak

226 Winfield Drive, Spartanburg, S.C. 29307



**McGILL ASSOCIATES, P.A.**  
**CONSULTING ENGINEERS**

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July 14, 1993

Mr. Thomas M. Hord  
Town Manager  
Town of Lake Lure  
Post Office Box 255  
Lake Lure, North Carolina 28746

RE: Proposed Scope of Study for Water System Master Plan.

Dear Mr. Hord:

Pursuant to our conversation concerning the proposed Water System Master Plan for Lake Lure, we have prepared the following proposal for your consideration.

**PROPOSED SCOPE OF SERVICES**

**A. DEVELOPMENT OF PLANNING PARAMETERS.**

1. Establish project objectives.
2. Study methodology.
3. Factors influencing water services.
4. Population projections.
  - a. All year populations.
  - b. Seasonal population trends.
5. Economic factors influencing water system services.

**B. ASSESSMENT OF THE EXISTING WATER SYSTEM.**

1. Present service demand characteristics.
2. Evaluation of existing facilities and deficiencies.
3. Fire protection issues.
4. Projection of future demand for water services.
  - a. Residential consumption.
  - b. Commercial demand assumptions.
  - c. Wholesale demand requirements.

C. WATER SYSTEM MAPPING.

Preparation of mapping of the existing water system on the Town's Powell Bill base map.

D. RECOMMENDED WATER SYSTEM IMPROVEMENTS.

1. Water source conclusions and recommendations.
2. Water storage improvements.
3. Distribution system recommendations.
4. Fire protection considerations.
5. Estimated cost of proposed water system recommendations.

E. IMPLEMENTATION OF THE WATER SYSTEM MASTER PLAN.

1. Water system policy considerations.
2. Schedule recommended improvements to the water system.
3. Examine project financing alternatives.

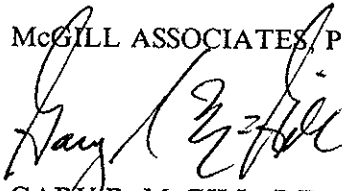
**PROPOSED PROJECT FEE**

The above approach reflects our past discussions regarding this important project. At your suggestion, we have also added the water system mapping component to the proposed scope of services. We propose to accomplish the proposed scope of services for a total fee of NINETEEN THOUSAND DOLLARS (\$19,000.00). McGill Associates is prepared to begin the project upon receipt of your notice to proceed.

We look forward to working with the Town on this important project.

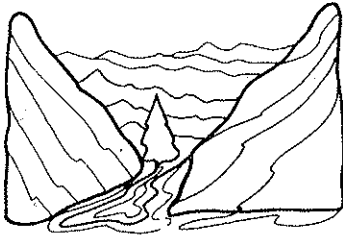
Sincerely,

McGILL ASSOCIATES, P.A.



GARY R. MCGILL, P.E.  
President

RECEIVED AUG 18 1993



**William G. Lapsley & Associates, P.A.**

Engineering, Surveying and Land Planning

1635 Asheville Highway

Post Office Box 546

Hendersonville, North Carolina 28793

704-697-7334 • FAX 704-697-7333

August 20, 1993

Hendersonville  
William G. Lapsley, P.E.  
Gary Tweed, P.E.  
Stacy-K. Rhodes, R.L.S.  
Steven L. Waggoner, R.L.S.  
G. Marcus Brittain, R.L.S.

Sylva  
Donald L. Hunley, P.E.

Mr. Tom Hord  
Town Manager  
Town of Lake Lure  
PO Box 255  
Lake Lure, NC 28746

RE: Water System Comprehensive Study  
and Master Plan

Dear Mr. Hord:

We are pleased to submit herewith for your consideration our proposal for professional engineering services for a comprehensive study of the Lake Lure water system and preparation of a master plan.

As you know our firm is providing professional engineering services throughout Western North Carolina with special expertise in water and wastewater systems. We are very familiar with the Town of Lake Lure as our firm has provided design services for several residential developments inside the corporate limits and a detailed evaluation report for Fairfield Mountains.

We are including in our proposal, the following information for your consideration:

1. INTRODUCTION
2. PROPOSED METHODOLOGY
3. INTRODUCTION to FIRM
4. PROPOSED METHOD of COMPENSATION

Mr. Tom Hord  
Page 2  
August 20, 1993

We appreciate the opportunity to present our qualifications for this project to the Town of Lake Lure. If you have any questions or would like us to meet with the Board, please feel free to contact our office.

Sincerely,



William G. Lapsley, P.E.

WGL/ec

**TOWN OF LAKE LURE**  
**RUTHERFORD COUNTY, NORTH CAROLINA**

**PROPOSAL FOR**  
**PROFESSIONAL ENGINEERING SERVICES**  
**for**  
**WATER SYSTEM COMPREHENSIVE STUDY**

Submitted By

**WILLIAM G. LAPSLEY & ASSOCIATES, P.A.**

Hendersonville, North Carolina

AUGUST, 1993

## INTRODUCTION

The Town of Lake Lure has requested our proposal to provide professional engineering services necessary to prepare a comprehensive study and master plan of the Town's water system.

This proposal presents our analysis of the professional services necessary to successfully complete the report. It also outlines the methodology which we would intend to follow during the course of the work. And finally, we are presenting our firm's qualifications to undertake this project.

Under the direction of William G. Lapsley, P.E., our firm presents a strong team of experienced professional engineers to serve the Town of Lake Lure. We recognize the long-term impact of these reports on the Town's future and look forward to assisting the Town staff in this most important project.



## PROPOSED METHODOLOGY

In order to complete this project for the Town of Lake Lure, we have analyzed the various components carefully, the anticipated time schedule, etc., and developed a plan for accomplishing the work. Our step-by-step listing of the project tasks follows along with a schedule.

### I. WATER SYSTEM COMPREHENSIVE STUDY and MASTER PLAN

#### TASK 1 DATA ACQUISITION

WGLA will meet with Town staff to review existing system maps and records of the water system. WGLA will meet with State Public Water Supply Branch officials in Black Mountain to review files and obtain input on operational and water quality concerns.

#### TASK 2 SYSTEM MAPPING

Based upon the information gathered under Task 1, prepare a detailed map of the Town's water system. This map will include pipeline sizes, valve locations, water storage tanks, well locations, fire hydrants, and other pertinent information.

#### TASK 3 SYSTEM EVALUATION

WGLA will complete a computer analysis of the existing water system to determine weak service areas. Recommendations for water distribution system improvements will be presented including the availability of fire protection.

WGLA will evaluate the existing water supply quantity and quality. Recommendations will be prepared for additional supply and/or storage to meeting existing and future demands.

#### TASK 4 FUTURE SYSTEM DEMAND

WGLA will prepare a master plan and identify areas within the Town corporate limits and adjacent areas that may be served by the water system. Projected future water system demands will be prepared with recommendations for water system expansion. Water line extension policies will be proposed.

#### TASK 5 CAPITAL IMPROVEMENTS PROGRAM

WGLA will summarize the results of Tasks 3 and 4 into a recommended capital improvements program. This will include specific project and associated cost estimates. A priority funding schedule will be developed along with funding alternatives.

#### TASK 6 FINAL REPORT

WGLA will compile a final written report including all of the information conclusions and recommendations developed in the previous tasks. The final report will be used in preparation of the Water Supply System Report and the Local Water Supply Plan required to be submitted to the N.C. Division of Water Resources by November 30, 1993. WGLA will be pleased to make a formal presentation to the Board regarding the final report and the water supply plan.

## INTRODUCTION TO WILLIAM G. LAPSLEY & ASSOCIATES, P.A.

William G. Lapsley & Associates, P.A., was formed in 1985 as a split-off from the Asheville firm of McGill, Lapsley & Associates, P.A.

William G. Lapsley, P.E., founded the firm in Hendersonville to serve local government, land developers, industry and private clients throughout Western North Carolina. With extensive experience in the design, operation, and management of water and wastewater systems, the firm has experienced phenomenal growth in its client base and its projects under contract.

Its staff of fifteen (15) full-time persons has continued to expand to meet the needs of our clients, yet maintain the local, personal relationships which have been the basis of Mr. Lapsley's professional reputation.

The firm has completed numerous professional studies, design and construction of a number of major projects over the past seven (7) years, and has several new assignments in progress. A detailed description of related experience follows for information

### BUNCOMBE COUNTY BOARD OF COMMISSIONERS

#### BREVARD ROAD and VENABLE INDUSTRIAL SITE SANITARY SEWER IMPROVEMENTS

Prepared plans, specifications, contract documents, etc. for the installation of approximately 14,000 LF of 15-inch, 10-inch and 8-inch gravity sewer line, two (2) major sewer lift stations and sewer force mains, one which crosses the French Broad River. The project serves the Biltmore Square Regional Shopping Mall and adjacent 100-acre Ridgefield Business Park.

Project Cost \$1,000,000

### METROPOLITAN SEWERAGE DISTRICT of BUNCOMBE COUNTY

#### PISGAH VIEW SANITARY SEWER IMPROVEMENTS

Prepared plans, specifications, contract documents, etc. for approximately 6,000 LF of 10-inch and 8-inch gravity sewer line to replace a badly deteriorated sewer collection system.

Project Cost \$ 350,000

## ASHEVILLE-BUNCOMBE WATER AUTHORITY

Assisted a prominent international environmental engineering firm, Camp Dresser & McKee, in the development of a water resources master plan and capital improvements program.

Engineering Fee \$ 400,000

### WEST ASHEVILLE CONNECTOR

Prepared plans, specifications and contract documents, construction administration and inspection for 25,000 LF of 24-inch and 30-inch water transmission main to serve City of Asheville.

Project Cost \$2,600,000

## BILTMORE DAIRY FARMS, INC.

### BLOCKS T, U, and V SUBDIVISIONS

Prepared detailed plans and specifications for roads, stormwater, drainage, water distribution, wastewater collection, etc. in 54 lot residential development within upscale community of Town of Biltmore Forest.

Project Cost \$2,100,000

### BRAESIDE at BILTMORE PARK

Prepared detailed plans and specifications for roads, stormwater drainage, water distribution, wastewater collection, etc. in 87 lot residential development. This is the first phase of a 700 acre planned community.

Project Cost \$ 750,000

## HENDERSON COUNTY BOARD OF COMMISSIONERS

Prepared a detailed wastewater system master plan for the Mud Creek Drainage Basin in Henderson County. The Board of County Commissioners approved of the plan and with the assistance of William G. Lapsley & Associates, P.A., negotiated an agreement with the City of Hendersonville for wastewater treatment services.

## MUD CREEK SANITARY SEWER SYSTEM IMPROVEMENTS - PHASE 1

Provided detailed plans, specifications, contract documents, contract administration, and construction inspection services for approximately 48,600 feet of 24-inch, 18-inch, 15-inch, 12-inch, and 8-inch diameter interceptor sewers, 3,700 feet of 8-inch force main, and a 1,000 GPM sewer lift station. This is the first phase of a ten-year plan for providing a community wastewater collection system in a rapidly expanding residential and commercial section of Henderson County.

Project Cost \$2,100,000

## NAPLES AREA WASTEWATER COLLECTION/TREATMENT SYSTEM

Prepared a preliminary engineering report on the development of a community wastewater system to serve major commercial development area in Henderson County. Assisted in project funding and anticipate design and construction to be authorized in 1992.

Project Cost \$ 570,000

## TOWN OF RUTHERFORDTON, NORTH CAROLINA

Provided engineering design, contract administration, and construction services for a major upgrade of the Town's interceptor sewer line and wastewater treatment plant to accommodate a new industrial customer, Outboard Marine Corporation. The project had a State Community Development Block Grant as the principal source of financing.

## CLEGHORN CREEK INTERCEPTOR SEWER and WASTEWATER TREATMENT PLANT EXPANSION

This project required the installation of 8,100 feet of 18-inch diameter interceptor sewer line to replace an existing 12-inch sewer line that was severely deteriorated. The project required a rapid construction schedule and close cooperation between the Town, the engineer, the contractor, and the industry. In order to maintain adequate treatment plant capacity, it was necessary to expand an existing 0.64 MGD stabilization pond system to 1.0 MGD. The existing aeration system was experiencing major operational problems, and the treatment process was replaced with floating aerators and an upgrade of the bar screen, grit collection system, and disinfection equipment.

Project Cost \$ 670,000

WGLA would be pleased to provide client contacts and additional information as requested by the Town.

## PROPOSED METHOD OF COMPENSATION

The professional engineering services required to successfully complete this project for the Town of Lake Lure will require extensive experience in water system operation and maintenance. The manhours of technical effort necessary are affected by a number of factors.

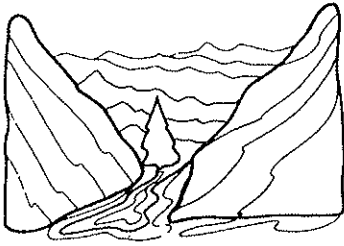
There are several methods of compensation which could be considered for this project including:

1. Lump Sum contract - a negotiated amount due to the Engineer for services rendered regardless of the cost.
2. Cost Plus Fixed Fee - a negotiated fixed fee paid to the Engineer for profit compensation regardless of the cost, and all other engineering services paid based upon an agreed upon fee schedule.
3. Cost with a Maximum Fee - all professional engineering services are provided based upon an agreed upon fee schedule with a maximum fee not to be exceeded without prior approval of the Town and due to a change in the scope of the work.

We have performed professional engineering services using all of these methods. our experience has led us to prefer option number 3 as the most fair and equitable arrangement especially when working on local government projects. Once an agreed upon maximum fee is established, the Engineer is compensated at a fair rate including overheads and profit while the Town of Lake Lure is given the opportunity of saving on the engineering charges for the overall project. If extra Town staff support is provided and circumstances are favorable throughout the project, then conceivably less engineering time will be spent and the total engineering fee will end up less than the maximum fee included in the engineering agreement.

Based upon our understanding of the project at this time, we expect a maximum fee of \$14,000 for the Water System Comprehensive Study and Master Plan to be fair and equitable. The basic fee schedule is being used on all of our current projects.

Upon acceptance of our proposal, we will furnish a standard Agreement for approval by the Town.



## William G. Lapsley & Associates, P.A.

Engineering, Surveying and Land Planning

1635 Asheville Highway

Post Office Box 546

Hendersonville, North Carolina 28793

704-697-7334 • FAX 704-697-7333

Hendersonville  
William G. Lapsley, P.E.  
Donald L. Hunley, P.E.  
Stacy K. Rhodes, R.L.S.  
Steven L. Waggoner, R.L.S.  
G. Marcus Brittain, R.L.S.

### BASIC FEE SCHEDULE

January 1, 1992

#### I. PROFESSIONAL FEES

Engineering Division	
Principal Engineer	\$68.00
Senior Professional Engineer	63.00
Professional Engineer	53.00
Associate Engineer	42.00
Engineering Technician	37.00
Construction Inspector	37.00
Computer-aided Design Technician	28.00
Senior Draftsperson	24.00
Draftsperson	22.00
Clerical	16.00

#### Surveying Division

Registered Land Surveyor	45.00
Party Chief	32.00
Instrument Person	27.00
Rod Person	22.00
Draftsperson	22.00
Clerical	16.00

#### II. EXPENSES

- A. Mileage - \$0.30 per mile
- B. Telephone, reproduction costs, postage, overnight lodging, meals, and other incidental expenses shall be a direct charge per receipts.

#### III. ASSOCIATED SERVICES

Associated services required by the project such as soil analysis, materials testing, etc. shall be identified and agreed upon prior to initiating work.

**WILLIAM G. LAPSLEY**

**Principal Engineer**

**President**

**William G. Lapsley & Associates, P.A.**

**EDUCATION**

- |                      |  |
|----------------------|--|
| High School - (1966) | Randolph Township High School<br>Randolph, New Jersey<br>(College Preparatory Curriculum)  |
| College - (1970)     | University of Wyoming<br>Laramie, Wyoming<br>(Bachelor of Science Degree in Civil Engineering)   |
| - (1977)             | Institute of Government<br>University of North Carolina at Chapel Hill<br>Chapel Hill, North Carolina<br>(Municipal Administration Course) |
| - (1980)             | Institute for Water and Wastewater Utility Management<br>Virginia Polytechnic University<br>Blacksburg, Virginia                           |

**CIVIC ACTIVITIES**

- |                                      |   |
|--------------------------------------|---|
| Board of Directors                   | - Greater Hendersonville Chamber of Commerce (1981-1987)(1991 to date)<br>(Current Second Vice President)<br>- Hendersonville YMCA (1986-1988)<br>- Henderson County United Way (1987-1988)<br>- First Citizens Bank & Trust Co. (Local Board)<br>(1985 - date) |
| Vice President -<br>External Affairs | - Carolina Village, Inc. (1981 - date)<br>(Retirement Village, Hendersonville, N.C.)  |
| Past President -                     | - Rotary Club of Hendersonville (1986-87)<br>(Currently a member)   |
| Past District Chairman               | - Echota District (1982, 83)<br>Boy Scouts of America   |
| Past Vice Chairman                   | - Blue Ribbon Study Committee (1982)<br>(Appointed by Henderson County Board of Commissioners)  |



## PROFESSIONAL AFFILIATIONS

Member -     Water Pollution Control Federation (WPCF)  
                  American Society of Civil Engineers (ASCE)  
                  American Water Works Association (AWWA)  
                  American Public Works Association (APWA)  
                  Solid Waste Association of North American (SWANA)

Registered Civil Engineer - State of California (1973)

Registered Professional Engineer - State of North Carolina (1974)  
  State of South Carolina (1982)  
  State of Florida (1985)

Past President - Western Branch, North Carolina Section  
                          American Society of Civil Engineer (1979-80)

Past Instructor - Water Treatment Plant Operators Certification Review Course (1980)  
                          Blue Ridge Technical College  
                          Hendersonville, North Carolina

Past Chairman   - Western Regional Water Meter & Pipe Systems School  
                          Asheville Buncombe Technical College (1983, 84, 85, 86)

Past Chairman   - North Carolina Section American Water Works Association (1989)  
                          - North Carolina Water Pollution Control Association (1989)

## EMPLOYMENT BACKGROUND

June, 1985 - to date             William G. Lapsley & Associates, P.A.  
  1635 Asheville Highway  
  Hendersonville, North Carolina

Major Duties:                   Responsible for providing professional civil engineering services  
   to local government, private developers and industry throughout  
   Western North Carolina. Special expertise in water and  
   wastewater systems, roads, storm drainage, land planning, solid  
   waste management landfills, and local government operations.

Jan. 1984 - May, 1985         McGill, Lapsley & Associates  
   Suite 216 Executive Park  
   Asheville, North Carolina

Vice President, Consulting Engineer

Major Duties:                   McGill, Lapsley & Associates was a professional consulting firm

Major Duties: McGill, Lapsley & Associates was a professional consulting firm serving clients throughout western North Carolina. In addition to traditional engineering design services, the firm offered local governments general consulting expertise in capital improvements budgets, grants administration, bond referendums, etc.

Aug. 1982 - Jan. 1984 Butler/McGill Associates  
12 Broad Street  
Asheville, North Carolina

Project Engineer

Major Duties: A professional consulting engineering firm rendering civil engineering design services to municipal, industrial, and private clients. As a registered professional engineer, I was responsible for the design of various type projects including water distribution systems, pumping stations, storage reservoirs, sanitary sewer lines, wastewater treatment plants, storm water drainage systems, etc. Daily work included client contact, grants administration, conducting public meetings, coordination with Federal and State regulatory agencies, contract preparation, construction design drawings and specifications, construction inspection/supervision, etc.

April, 1981 - Aug. 1982 Brummett & Waddell, Inc.  
Ashe Street  
Hendersonville, North Carolina

Project Manager

Major Duties: General contracting firm in Hendersonville which specializes in road construction, large earth moving projects, waster and sewer line construction, etc. I prepared construction cost estimates for major projects, submitted bid proposals, coordinated construction work for a variety of projects. During construction in progress, I was responsible for work scheduling, materials purchasing, contacts with the design engineer and owner, prepare payment requests, and represent the interest of the company in contract disputes. In addition, was involved in business development and public relations aspects of the company's operation.

July, 1978 - April, 1981      Water and Sewer Department  
City of Hendersonville  
Hendersonville, North Carolina

Director

Major Duties:

This publicly owned water and sewer utility system served approximately 10,000 metered connections to the water system and 2,500 connections to the sewer system. The staff included approximately 45 full-time persons and had an annual budget of approximately \$1.4 million. The department operated and maintained an extensive water distribution system serving a major portion of Henderson County and a sewer collection system principally within the city limits of Hendersonville.

I was responsible for the overall operation of the department including: meter reading, billing and collections, purchasing, accounts receivable, budgeting, accounts payable, investment of idle funds, bond payments, water and sewer line construction and maintenance, operation of a 9 MGD water treatment plant, personnel management, and overall public relations of the utility.

June, 1974 to July, 1978 -      Water and Sewer Department  
City of Hendersonville  
Hendersonville, North Carolina

Assistant Director

Major Duties:

The department was in a transition period at this time changing from a small municipal utility to a large county-wide system. In addition, the current Director was preparing for retirement and a training period was desirable for the new Director. I prepared a personnel plan, long-range planning budget, submitted several major Federal and State construction grant applications, and assisted in the overall operation of the department.

July, 1970 to June, 1974      Los Angeles County  
Flood Control District  
Los Angeles, California

Principal Civil Engineer  
Senior Civil Engineer  
Civil Engineering Assistant

Major Duties:

This was my first full-time position upon graduation from college. The district operated and maintained one of the largest flood control and storm water drainage systems in the world. I was initially assigned to the Operation and Maintenance Division where I was responsible for routine maintenance of 14 large flood control dams. This included routine work scheduling, purchasing, cost estimating, field supervision, etc. After several months, I became involved in the dam safety investigation work being conducted after the February, 1971, earthquake in Los Angeles. I was assigned to a special task force by the Chief Engineer where I became a research assistant and contract administrator for the detailed engineering analysis of the safety of the large dams.

**DONALD L. HUNLEY**  
**Professional Engineer**

EDUCATION:

High School - (1972)	Monroe High School Monroe, North Carolina
College - (1977)	University of North Carolina-Chapel Hill Chapel Hill, North Carolina (Bachelor of Arts Degree in Geology/Botany)
- (1982)	University of Wyoming Laramie, Wyoming (Bachelor of Science Degree in Civil Engineering)

PROFESSIONAL AFFILIATIONS

Registered Professional Engineer - State of North Carolina (1988)

Notary Public - State of North Carolina

Member - American Water Works Association

EMPLOYMENT BACKGROUND:

1988 to Present	-	William G. Lapsley & Associates, P.A. Hendersonville, North Carolina  Consulting Engineer  Design of water and wastewater systems, site planning, dam design, and solid waste management for local government, industry, and private development.
1987 - 1988	-	Eastern Engineering Group Charlotte, North Carolina  Project Engineer  Planning, analysis and reporting for geological, groundwater, and geotechnical investigations.

- 1985 - 1987      -      Applied Geology Associates  
Auckland, New Zealand
- Civil Engineer (Geotechnical)
- Planning and supervision of field investigations, engineering analysis and design, and reporting for a geological, environmental, and mining consultant.
- 1983 - 1984      U.S. Bureau of Reclamation  
Duchesne, Utah
- Civil Engineer (Design)
- Design studies, construction, inspection, and contract administration for features of a trans-basin diversion water project.
- 1983      Department of Civil Engineering  
University of Wyoming
- Instructor - Fluid Mechanics
- Preparation and presentation of a one-semester course in Fluid Mechanics.

**GARY T. TWEED**  
**Project Engineer**

EDUCATION:

High School - (1970)	Enka High School Enka, North Carolina
College - (1974)	N.C. State University Raleigh, North Carolina (Bachelor of Science Degree in Civil Engineering)

Seminars and Workshops:

- |          |  |
|----------|--|
| - (1992) | U.S.E.P.A. - Atlanta, Georgia<br>Design, Operation & Closure of Municipal<br>Solid Waste Landfills |
| - (1992) | State of N.C. - Raleigh, NC<br>High Tech Landfills/Case Studies<br>in North Carolina               |
| - (1993) | Clemson University, Greenville, SC<br>Municipal Solid Waste Landfill Design<br>& Operation         |

PROFESSIONAL AFFILIATIONS

Registered Professional Engineer - State of North Carolina (1978)

Member - Water Pollution Control Association

EMPLOYMENT BACKGROUND:

June, 1992	-	William G. Lapsley & Associates, P.A. Hendersonville, NC
		Professional Engineer
		Design of water and wastewater systems, site planning, and solid waste management for local government, industry, and private development.

1974 - May, 1992     -     N.C. Department of Health, Environment and Natural  
Resources, Division of Environmental Management

Environmental Engineer II

Responsible for enforcement of N.C. laws and regulations as established through State and Federal legislation. Experienced in State and Federal permitting activities, engineering plans, review and approval; compliance inspection procedures, water and air ambient monitoring, and other activities relating to air, water, and groundwater environmental programs.



**JOHN B. JETER**  
**Engineer-in-Training**

EDUCATION:

High School - (1970)	Hendersonville High School Hendersonville, North Carolina
College - (1974)	University of North Carolina-Chapel Hill Chapel Hill, North Carolina (Bachelor of Arts Degree in English)
- (1984)	North Carolina State University Raleigh, North Carolina (Bachelor of Science Degree in Civil Engineering)

PROFESSIONAL AFFILIATIONS

Engineering in Training Certificate - North Carolina (1985)

EMPLOYMENT BACKGROUND:

March, 1990 to Present	-	William G. Lapsley & Associates, P.A. Hendersonville, North Carolina  Associate Engineer  Design of water and wastewater systems, site planning for local government, industry, and private development in Western North Carolina.
1987 - 1990	-	City of Whiteville Whiteville, North Carolina  City Engineer  Responsible for project management construction coordination and inspection for all city improvement projects Established design criteria and standards, assisted in the preparation of plans, specifications, and cost estimates. Supervisory responsibility for budget and personnel in Water and Sewer Operations, Sanitation and Streets, Wastewater Treatment Plant, and City Garage.
1985 - 1987	-	N.C. Division of Highways Raleigh, NC

Bridge Design Engineer I  
Engineer in Training

Training program with N.C.D.O.T. including structural design, roadway design, traffic engineering, location and survey, construction, and maintenance.

Design of highway structures including bridges and culverts, preparation of construction plans and specifications.



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## NORTH CAROLINA LEAGUE OF MUNICIPALITIES

Local Government Center/W. Lane and N. Dawson Streets  
P.O. Box 3069/Raleigh, North Carolina 27602 (919) 834-1311  
FAX Number — 919-733-9519

### Important Cable TV Certification Form Enclosed

August 17, 1993

**NOTE:** This notice is being sent only to city and county managers or clerks, and is time-sensitive material. The enclosed form is used to apply to the Federal Communications Commission to be certified as a franchise authority to regulate basic cable TV and customer service rates. You may not file the certification before September 1. Please read the enclosed information carefully before sending by certified mail. An early August memo outlined questions and answers involved in Cable TV regulation; if you need an additional copy, please call Ann Burchette at NCLM offices.

Enclosed are three pieces of information:

1. A copy of the official certification form to be sent to the FCC requesting certification. Please read and complete carefully; there are questions and instructions on both sides. Only this form may be submitted for certification.
2. A list of additional legal and technical resources that we are aware of, who have done cable TV consulting work for cities or counties in North Carolina, and the units for whom they have worked. This is not a comprehensive list and certainly there are many others to choose from in the country.
3. A brochure describing the National Association of Telecommunications Officers and Advisors (NATOA) as an excellent source of information to its members. This is a professional organization serving citizens through city and county governments and regional authorities in the development, regulation, and administration of cable television systems. NATOA is an affiliate of the National League of Cities, providing technical assistance and information, and sponsors conferences and training sessions that share information and experiences on what local governments are doing in cable and telecommunications planning.

#### What steps does a franchise authority (FA) take to become certified to regulate rates?

1. File a request for certification, on the enclosed form, by certified mail, preferably on the first available date, September 1. A certification becomes effective automatically 30 days after it is filed at the FCC unless the FCC specifically disapproves of the request. This then qualifies you to regulate basic tier cable TV rates.
2. In order to answer **yes** and to comply with questions 3 & 5 on the certification form, within 120 days of filing the form, you must merely adopt a simple local rule stating you will
  - (a) regulate rates consistent with the FCC's regulations; and
  - (b) provide a reasonable opportunity for consideration of the views of interested parties.

The answer to question #4 (a) is **yes**; you do have the authority.

3. Once the certification becomes effective and the FA has adopted the required local rule, the FA may notify the cable operator that the authority has been certified and has adopted the required local rule. (We will provide a sample letter later). The basic rates in effect on the date of such notification are the

rates that are initially subject to rate regulation (see related question on *cable rate freeze* below). That notice may be provided as early as 30 days after you have filed for certification and your application has not been denied by the FCC.

4. After receiving notification, a cable operator has 30 days to submit its initial rate schedule for basic rate and associated equipment on FCC Form 393 to the FA after it receives written notice that the FA has been certified to regulate rates. A cable operator must inform the franchising authority of whether it wants its *reasonable* rate determined on a **benchmark** or **cost-of-service** basis. A cable operator has the burden of proof of demonstrating that its existing or proposed rates for basic service and associated equipment comply with the relevant Cable Act provisions and FCC rules.

An FA has 30 days after receiving the operator's initial rate schedule (and thereafter, after receiving notice of a rate increase) to make a rate determination, or issue a brief order within the 30-day period notifying the cable operator that it needs additional time to make a rate decision.

Otherwise, unless there is action by the FA, the initial rate or rate increase becomes effective. If the FA issues an order requesting additional time, the following time periods apply: (1) An FA will have an additional 90 days to review a rate request if the cable operator chooses **benchmark** regulation, or (2) An FA will have an additional 150 days to review a rate request if the cable operator chooses **cost-of-service** regulation.

After expiration of the relevant additional time period, the cable operator's initial rate goes into effect if not disapproved by FA. (If a proposed rate increase is at issue, the cable operator may impose the rate increase at the end of the time period). An FA may subsequently issue a written decision disapproving any portion of the rate (and order a refund) if it issues an order by the end of the relevant additional time period informing the cable operator to keep an accurate account of all amounts received by reason of the rate in issue and on whose behalf such amounts were paid.

To reiterate our earlier advice:

The NCLM will issue additional updates, forms, models etc. as we receive practical advice on implementing general aspects of the law, but cannot provide detailed technical assistance and advice on specific local situations. Andy Romanet, Associate General Counsel and Terry Henderson, Director of Intergovernmental Programs, will provide assistance in these areas.

**We strongly suggest that cities and counties come together locally in communities of interest (such as those who have the same cable service providers or perhaps COGs) to get legal advice or technical assistance.** This should provide a less expensive and more coordinated approach to regulation within your area.

**IMPORTANT NOTICE:** (The following information has been provided by NATOA: "While franchising authorities may initiate the process that will enable them to regulate basic cable rates on the local level... at the same time, the FCC has maintained the November 15, 1993 date of expiration for the federal cable rate "freeze". However, the FCC also preempted local notice requirements for rate and service changes, so you may expect that many subscribers in your community will face sudden changes in cable rates and service packaging beginning September 1.

"As these changes are underway, you should be alerted that the cable television industry, in many regions of the country, is embarking on an organized campaign to discourage local governments from filing for FCC certification to regulate basic cable rates. Many false and misleading claims and arguments are being put forth by the industry...**Do not be misled by the cable industry's continued campaign against rate regulation. The only way local government can adequately protect subscribers is by becoming certified to regulate rates.** Without rate regulation certification, your community will be without adequate tools to prevent unwarranted increases in basic cable rates after the rate freeze expires on November 15th, and may be unable to adequately respond to both citizens and the FCC on complaints regarding non-basic cable rates in your community. **The types of "informal" or "side-agreements" being urged by the cable industry are unenforceable, as the FCC has publicly stated.** Despite cable company assertions to the contrary, the certification process is simple and painless, the regulation process is not difficult to understand or implement, and the primary burden of compliance with federal standards remains on the operator — not the franchising authority."

## CABLE TV CONSULTING RESOURCE LIST

Partial Listing of  
Independent Cable Television Consultants  
With Local Government Experience in North Carolina  
and Selected Attorneys  
August, 1993

### CONSULTANTS

#### CABLE RIGHTS

Mr. Ed Harris  
P. O. Box 9011  
Rocky Mount, NC 27804  
(919)443-3378  
[Scotland Neck, Clinton, Dover]

#### CHARLES GRAMLICH & ASSOCIATES

Mr. Charles Gramlich  
815-A Brazos #229  
Austin, Texas 78701  
Phone: (512) 453-8801  
[Farmville]

#### RICE, WILLIAMS ASSOCIATES

Ms. Jean Rice  
1000 Connecticut Ave NW  
Suite 1103  
Washington, D. C. 20036  
Phone: (202) 737-2400  
[Tarboro, Greenville, Cary, Fayetteville, Nags  
Head, Rocky Mount, Raleigh, and others]

#### JENNINGS COMPANY

Mr. Marc S. Jennings  
5631 Signet Drive  
Dayton, Ohio 45424  
(513) 237-1966  
[Hendersonville, Laurel Park, West Jefferson,  
Jefferson, Sparta, Henderson County and Ashe  
County]

#### MUNICON

Mr. Larry Monroe  
P. O. Box 489  
East Greenbush, NY 12061  
(518) 479-4495  
[Worked for New York and Texas State Municipal  
Leagues]

### ATTORNEYS

#### MAUPIN, TAYLOR, ELLIS & ADAMS

Mr. John Cooke  
P. O. Drawer 19764  
Raleigh, NC 27619  
Phone: (919) 981-4000

#### MCNAIR & SANFORD

Mr. Alfred P. Carlton, Jr.  
1 Exchange Plaza — Suite 810  
Raleigh, NC 27601  
(919) 890-4190  
[Richmond, Onslow, and New Hanover Counties,  
NC Association of County Commissioners]

#### MOSS & BARNETT

Mr. Adrian Herbst  
4800 Norwest Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-4119  
(612) 347-0300  
[Durham, Durham County, Boone, Farmville,  
Chapel Hill]

#### LEIBOWITZ & SPENCER

Mr. Matthew Leibowitz  
Suite 1450  
Sunbank International Center  
One Southeast Third Avenue  
Miami, Florida  
[Has worked with Florida League of Cities]

#### SPIEGEL & MCDIARMID

Mr. Jim Horwood  
1350 New York Avenue, NW — Suite 1100  
Washington, DC 20005  
(202) 879-4000  
[Morganton, Highlands]

For FCC Use Only

## CERTIFICATION OF FRANCHISING AUTHORITY TO REGULATE BASIC CABLE SERVICE RATES AND INITIAL FINDING OF LACK OF EFFECTIVE COMPETITION

1 Name of Franchising Authority		
Mailing Address		
City	State	ZIP Code
Telephone No. (include area code):		
Person to contact with respect to this form:		

2. a. Name (s) and address(es) of cable system(s) and associated FCC community unit identifiers within your jurisdiction. (Attach additional sheets if necessary.)

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

Cable System's Name		
Mailing Address		
City	State	ZIP Code
Cable System's FCC Community Unit Identifier:		

2. b. Name (s) of system(s) and associated community unit identifier(s) you claim are subject to regulation and with respect to which you are filing this certification. (Attach additional sheets if necessary.)

Name of System	Community Unit Identifier
----------------	---------------------------

Name of System	Community Unit Identifier
----------------	---------------------------

2. c. Have you served a copy of this form on all parties listed in 2.b.? ☐ Yes ☐ No

3. Will your franchising authority adopt (within 120 days of certification) and administer regulations with respect to basic cable service that are consistent with the regulations adopted by the FCC pursuant to 47 U.S.C. Section 543(b)? ☐ Yes ☐ No

4. With respect to the franchising authority's regulations referred to in Question 3, ☐ Yes ☐ No

a. Does your franchising authority have the legal authority to adopt them?

☐ Yes ☐ No

b. Does your franchising authority have the personnel to administer them?

☐ Yes ☐ No

5. Do the procedural laws and regulations applicable to rate regulation proceedings by your franchising authority provide a reasonable opportunity for consideration of the views of interested parties?

☐ Yes ☐ No

6. The Commission presumes that the cable system(s) listed in 2.b. is (are) not subject to effective competition. Based on the definition below, do you have reason to believe that this presumption is correct?

(Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.)

Signature
Title
Date

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE  
PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE  
TITLE 18, SECTION 1001).**

Return the original and one copy of this certification form (as indicated in Instructions), along with any attachments, to:

Federal Communications Commission  
Attn: Cable Franchising Authority Certification  
P.O. Box 18539  
Washington, D. C. 20036

## INSTRUCTIONS FOR FCC 328 FRANCHISING AUTHORITY CERTIFICATION

1. The Cable Television Consumer Protection and Competition Act, enacted in October 1992, changes the manner in which cable television systems that are not subject to effective competition are regulated. In general, rates for the basic service tier (the tier required as a condition of access to all other video services and containing, among other services, local broadcast station signals and public, educational, and public access channels) and associated equipment will be subject to regulation by local or state governments ("franchising authorities"). Rates for cable programming services and associated equipment (all services except basic and pay channels) will be subject to regulation by the FCC. Rates for pay channels (channels for which there is a specific per-channel or per-program charge) are not regulated.
2. Only cable systems that are not subject to effective competition may be regulated. Effective competition means that (a) fewer than 30 percent of the households in the franchise area subscribe to the cable service of a cable system; (b) the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area; or (c) a multichannel video programming distributor operated by the franchising authority for that franchise area offers video programming to at least 50 percent of the households in that franchise area.
3. In order to regulate basic service tier rates, a franchising authority must be certified by the FCC. In order to be certified, a franchising authority must complete this form. **An original and one copy of the completed form and all attachments must be returned to the FCC by registered mail, return receipt requested, to the FCC at the address on the form.**
4. A copy of the form must be served on the cable operator by first-class mail on or before the date the form is sent or delivered to the FCC.
5. The franchising authority's certification will become effective 30 days after the date stamped on the postal return receipt unless otherwise notified by the Commission by that date. The franchising authority cannot begin to regulate rates, however, until it has actually adopted the required regulations (see below) and until it has notified the cable operator that it has been certified and that it has adopted the required regulations.
6. In order to be certified, franchising authorities must answer "yes" to Questions 3, 4, and 5, which are explained as follows:
7. Question 3: The franchising authority must adopt rate regulations consistent with the Commission's regulations for basic cable service. To fulfill this requirement for certification, the franchising authority may simply adopt a regulation indicating that it will follow the regulations established by the FCC.

The franchising authority has 120 days to adopt these regulations after the time it is certified. The franchising authority may not, however, begin to regulate cable rates until after it has adopted these regulations and until it has notified the cable operator that it has been certified and has adopted the required regulations.

8. Question 4(a): The franchising authority's "legal authority" to regulate basic service must come from state law. In some states, only the state government may regulate cable rates. In those states, the state government should file this certification. Provisions in franchise agreements that prohibit rate regulation are void, and do not prevent a franchising authority from regulating the basic service tier and associated equipment.

Question 4(b): The franchising authority must have a sufficient number of personnel to undertake rate regulation.

A franchise authority unable to answer "yes" to questions 4(a) or 4(b) may wish to review the FCC's Report and Order in Docket 92-266, FCC 93-177 (released May 3, 1993) for further information on the establishment of alternative federal regulatory procedures.

9. Question 5: Franchising authorities must have procedural regulations allowing for public participation in rate regulation proceedings. If a franchising authority does not have these regulations already in place, it must adopt them within 120 days of certification and before it may undertake rate regulation.
10. Question 6: Most cable systems are not subject to effective competition, as defined by the Cable Act. (The definition is included above and on the form.) The franchising authority may presume that the cable system in its jurisdiction is not subject to effective competition.

For purposes of applying the definition of effective competition (see Item 2 above), "multichannel video programming distributors" include a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, a video dialtone service, and a satellite master antenna television system. A multichannel video programming distributor's services will be deemed "offered" when they are both technically and actually available. Service is "technically available" when the multichannel distributor is physically able to deliver the service to a household wishing to subscribe, with only minimal additional investment by the distributor. A service is "actually available" if subscribers in the franchise area are reasonably aware through marketing efforts that the service is available. Subscriptions of those multichannel video programming distributors offering service to at least 50 percent of the households in a franchise area will be aggregated to determine whether at least 15 percent of the households in the franchise area are served by competitors. A multichannel video programming distributor must offer at least 12 channels of programming, at least one channel of which is nonbroadcast, to be found to offer "comparable" video programming.

11. This certification form must be signed by a government official with authority to act on behalf of the franchising authority.

### FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information in this form is authorized by the Communications Act of 1934, as amended. The Commission will use the information provided in this form to determine if the franchise authority should be authorized to regulate cable rates. In reaching that determination, or for law enforcement purposes, it may become necessary to refer personal information contained in this form to another government agency. All information provided in this form will be available for public inspection. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to average 30 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records Management Division, AMD-PIRS, Washington, D. C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0550), Washington, D. C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1975, 5 U.S.C. 522a(e)(3) AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.