



Incorporated 1927

Town of Lake Lure

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MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL HELD TUESDAY, APRIL 13, 1999, 7:00 P.M. AT THE LAKE LURE MUNICIPAL CENTER

PRESENT: Mayor Jack Powell
Commissioner Carolyn Cobb
Commissioner Beth Rose
Commissioner Gene Sheffield
Commissioner Jack Stanier

Town Manager H. M. Place, III
J. Christopher Callahan, Town Attorney

ABSENT: N/A

CALL TO ORDER

Mayor Powell called the meeting to order at 7:00 p.m.

INVOCATION

Commissioner Cobb gave the invocation.

AGENDA ITEMS

After discussion, Commissioner Stanier moved, seconded by Commissioner Cobb, to add an item on the agenda (under other new business) to discuss a memorandum of April 13, 1999 regarding commercial use of the lake. The vote of approval was unanimous.

PUBLIC HEARING: PROPOSED AMENDMENT TO THE ZONING ORDINANCE REGARDING ADULT ENTERTAINMENT ESTABLISHMENTS

Notices of the Public Hearings were duly given within the legal classified section of the issue of the Forest City Daily Courier newspaper.

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Commissioner Cobb moved, seconded by Commissioner Sheffield, to enter into the Public Hearing for the purpose of discussing a proposed amendment to the Zoning Ordinance regarding adult entertainment establishments. The vote of approval was unanimous.

Town Manager Place read excerpts from his memorandum of February 26, 1999 to Town Council regarding regulation of adult entertainment establishments. (Copy of memo attached).

Mayor Powell invited citizens to speak during the public hearing. No one requested to speak during the hearing.

With no further discussion, Commissioner Rose moved, seconded by Commissioner Cobb to come out of the public hearing and re-enter the regular session of the meeting. The vote of approval was unanimous.

Commissioner Sheffield moved, seconded by Commissioner Cobb, to adopt the following Ordinance No. 99-04-13 as presented. The vote of approval was unanimous.

ORDINANCE NO. 99-04-13

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE TOWN OF LAKE LURE**

WHEREAS, the Town of Lake Lure desires to regulate the location and extent of sexually oriented businesses for the purpose of reducing the proven adverse impacts of these businesses on residential neighborhoods and places of worship, and to prevent a concentration of these businesses within the town boundaries; and,

WHEREAS, the North Carolina General Assembly has enacted legislation, specifically G.S. §160A-181, to clarify the options available to local governments regarding regulation of sexually oriented businesses; and,

WHEREAS, the Town of Lake Lure Zoning and Planning Board, after due consideration, has recommended amendments to Chapter 92 of the Code of Ordinances (the Zoning Regulations), to add a definition for "adult entertainment establishments" and to provide for these uses in the C-1 and CG zone districts and to establish appropriate standards for these uses; and,

WHEREAS, the Lake Lure Town Council, after due public notice, conducted a public hearing on the 13th day of April, 1999, upon the question of amending the zoning ordinance in this respect;

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

SECTION ONE: To amend § 92.004, Word Interpretations, to add the following definition:

"Adult Entertainment Establishment. Any business or other activity which, in order to comply with North Carolina G.S. 14-190.14 or 14-190.15 and amendments or supplements thereto, is required to limit its patronage or attendance to persons over the age of eighteen."

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SECTION TWO: To amend § 92.031(G), Conditional Uses in the C-1, General Commercial, zone district to add a new subsection (7) as follows:

- (7) Adult entertainment establishments, provided no such use shall be located on property which lies within:
 - (a) 1000 feet, as directly measured, of any property on which there is any other adult entertainment establishment;
 - (b) 1000 feet, as directly measured, of any property used as a school or place of worship;
 - (c) 400 feet, as directly measured, of any property zoned for residential purposes.

SECTION THREE: To amend § 92.031C (C), Conditional uses in the CG, General Commercial, zone district to add a new subsection (8) as follows:

- (8) Adult entertainment establishments, provided no such use shall be located on property which lies within:
 - (a) 1000 feet, as directly measured, of any property on which there is any other adult entertainment establishment;
 - (b) 1000 feet, as directly measured, of any property used as a school or place of worship;
 - (c) 400 feet, as directly measured, of any property zoned for residential purposes.

SECTION FOUR: The Zoning Administrator shall make all the necessary corrections and additions to the zoning ordinance so as to implement the provisions of this ordinance and shall henceforth enforce the ordinance as hereby amended.

SECTION FIVE: This ordinance shall be effective upon its adoption.

Adopted this 13th day of April, 1999.

ATTEST:

Mary A. Flack, CMC/AAE
Town Clerk

Jack Powell, Mayor

APPROVED AS TO FORM:

J. Christopher Callahan
Town Attorney

PUBLIC FORUM

Mayor Powell invited the audience to speak on any non-agenda item. William Breen, Jr., owner of Lake Lure Realty, requested to speak. Mr. Breen said he was unable to attend last month's Town Council meeting at which a decision was made to add additional slips at Fairfield Mountains. Mr. Breen stated he wanted to set the record straight on one item. Mr. Breen said

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he was informed about a letter being presented at the previous Town Council meeting by Commissioner Cobb to a Charles Ohmste which stated William Breen, the developer supported some action to get underway for us to have additional boat slips in Fairfield Mountains. Mr. Breen said he did not make this request to Commissioner Cobb and would like the record set straight.

Commissioner Cobb stated that she did talk with Mr. Breen about the letter. She said the letter was intended for the POA board and Mr. Breen's name was not used at any meeting. Commissioner Cobb explained that she had talked to several realtors who indicated support for additional boat slips. Commissioner Cobb apologized for any misunderstanding.

Mr. Breen said he hoped the public was aware that four of five Council members are also members of the POA and in his opinion would have a financial interest in the decision of additional boat slips. He asked if the public was made aware of this fact and in his opinion, it is considered a conflict of interest. Mr. Breen also mentioned that Mayor Powell had stated in the April issue of the Lake Lure newsletter that democracy is practiced in Lake Lure. He said democracy should be practiced and asked Town Council to recall the vote regarding the additional boat slips. Mr. Breen said he agreed with Commissioner Rose's opinion that a further study is needed. Mr. Breen stated that he was not for or against the additional boat slips in Fairfield Mountains.

Mayor Powell said he would like to address the question about four of five Council members being members of the Fairfield Mountains POA. The Mayor pointed out that all five Council members are also members of the Lake Lure Lakefront Owners Association. Mayor Powell asked what financial interests does the Town Council have by being either a member of the Fairfield Mountains POA or the LLLOA? He stated that in his opinion, Town Council has no financial interests and/or conflict of interest regarding their memberships. The Mayor asked Attorney Callahan to give his legal opinion regarding this matter.

Attorney Callahan said prior to the previous Town Council meeting, he was asked by two Council members and the Town Manager brought to his attention that four of the five Council members were members of the POA and the question was asked of him, did that create a conflict of interest disqualifying them from voting on the matters regarding the Fairfield Mountains POA request for additional boat slips. In his opinion, there was no conflict of interest based on the information given to him. Mr. Callahan explained the law on this subject is in North Carolina G.S. 160A-75 which says "no member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct." Mr. Callahan said he was informed that none of the four Council members were employees of the POA, and therefore, receiving salaries, none of the four Council members or spouses were officers in the POA, and he was advised that none of the four Council members anticipated in any way that their decision would make a financial difference to them. Based upon that information given to him, in his opinion there was no conflict of interest.

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Commissioner Cobb said she would like to address the POA membership per se. Commissioner Stanier is an owner of the Lodge on Lake Lure and is a member of the POA because his wife wanting to use the swimming facilities and just socialize. She said Commissioner Rose's membership had been grandfathered in with the POA and Commissioner Rose thought it would be an adverse effect and not a political gain. Commissioner Cobb said she believed the Powells joined for social reasons. Commissioner Cobb stated she was not solicited by anyone on the POA board. She explained her reason for supporting more boat slips. She said that in her opinion, it was the right thing that needed to be done and thought it would serve the whole community well.

Attorney Callahan stated that just being a member of an organization, doesn't mean that you have a conflict as for voting. It's when you have a direct substantial financial interest.

The Mayor said based on Attorney Callahan's opinion, the Town Council does not have a conflict of interest or any financial gain.

CONSENT AGENDA

Mayor Powell presented the consent agenda and asked if any item should be removed before calling for action.

Commissioner Cobb moved, seconded by Commissioner Sheffield, to approve the consent agenda items as presented. Therefore, the consent agenda, incorporating the following items was unanimously approved:

- a. Approved Minutes of March 16, 1999 (Regular Meeting/Town Workshop Meeting/Closed Session Meeting);
- b. Approved the Hickory Nut Gorge Chamber of Commerce request to hold a fireworks display on Sunday, July 4, 1999 at the Lake Lure Town Pavilion area; and authorized the Lake Lure Police Department and Fire Coordinator to assist during this event;
- c. Approved the Lake Lure Lakefront Owners Association to reserve the Lake Lure Community Hall in the Municipal Building on July 7, 1999 to hold their annual meeting from 5:30 p.m. until 8:30 p.m. and suspend the Town ordinance prohibiting alcoholic beverages during the time of this meeting; and
- d. Awarded bid to Whelen Engineering Company as vendor for siren systems in the amount of \$96,184 (FEMA monies).

End of Consent Agenda

OLD BUSINESS

- a. Proposed Amendment to the Lake Structures Regulations to Amend Section 94.14 Regarding Marinas (Adding a Section to Limit the Number of Marinas on the Lake. Second Reading.**

Mayor Powell said the proposed ordinance no. 99-04-13^A regarding marinas was presented at the last regular Town Council meeting and it was voted on the first reading. The Mayor explained this ordinance received a majority of the votes, but did not pass on the first reading because it required a two-thirds vote of all the members of Council in order to carry. He said, Council will be revoting on the proposed ordinance amendment on its second reading. Mayor Powell read the proposed amendment which states: "There shall be not more than three marinas allowed on the lake; one near the head of the lake, one near the dam, and one in Buffalo Bay."

Commissioner Rose moved, seconded by Commissioner Sheffield, to table the proposed ordinance amendment until a comprehensive study has been made and this study should be undertaken by the Lake Advisory Committee with financial support to them for an outside consultant.

Town Manager Place explained the effect of the motion to be considered. At this time, there is no limitation on the number of marinas that individuals can apply for; they can apply for marinas any place zoned R-3 or commercial. He explained the proposed amendment would limit the number of marinas to three. Mr. Place stated there are already three marinas at this time. He said if Council tables the adoption of this amendment, then anyone can apply for a marina, unless Council extends the moratorium. Mr. Place stated there was a moratorium in place, but it was only for 30 days to allow time to reconsider the ordinance amendment once again. He said the intent of the ordinance was not to open it up, but to restrict it.

Attorney Callahan stated that if the proposed ordinance amendment is passed tonight limiting the number of marinas to three which would prohibit additional marinas, then Council could also vote to do a study. He said they could come back after the study and do away with this ordinance (perhaps changing the number of marinas to 4, 5, or so on).

Town Manager Place suggested the current motion made by Commissioner Rose be amended.

After discussion, Commissioner Rose withdrew her previous motion. Commissioner Rose restated her motion to read "there shall not be more than three marinas allowed on the lake; and that a study be made on the use of the lake". Commissioner Sheffield seconded the motion.

Commissioner Stanier stated he did not think there was any objection or question with regards to the fact the town needs a study made on the use of the lake (whether it be for

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marinas, number of boats, permits, fishing & etc). Commissioner Stanier said he did not think it was necessary to combine the study in the amended motion with regards to three marinas being allowed on the lake. He recommended addressing the study issue separate.

Commissioner Cobb agreed with Mr. Stanier that the Town do a study on the use of the lake. She said everyone agreed at the last Town Council meeting there was a need for a study.

Mayor Powell stated that after the last town meeting he had talked with Clyde Lusk, retired coast guard admiral. He said Mr. Lusk had dealt with safety/boating issues all of his life. The Mayor said he had asked Mr. Lusk to review a packet of public information regarding lake issues. Since, then Mr. Lusk had responded by memorandum on April 12, 1999 regarding a proposed use of the lake study. (copy of memo attached). The Mayor distributed copies of Mr. Lusk's memorandum to Council members for review. He also read aloud the following conclusion from Mr. Lusk's memo.

At the end of two years you should have an enormous amount of data that has both empirical and subjective parts, results of trials of several of the safety suggestions obtained in your initial effort, and the attention and confidence of your whole constituency, many of whom have participated. That will be time to charter your full use of the lake study. By then you'll even have figured who you want on the study group.

The Mayor said it would be inappropriate for Council to make a decision on this study at this time. He explained this is a long range proposition and there is no use for the town to decide how to do it or who to do it, without looking at all of the alternatives.

Commissioner Sheffield said he had read Mr. Lusk's memorandum. He recommends that a study be done now before any more damage.

After discussion, Mayor Powell called for a vote on Commissioners Rose's motion as stated. Commissioners Rose and Sheffield voted in favor of the motion. Commissioners Cobb and Stainer voted against the motion. Mayor Powell voted against the motion breaking the tie vote. Therefore, the motion did not carry with a vote 2 to 3.

Mayor Powell called for another motion which was made by Commissioner Stainer, seconded by Commissioner Cobb, to approve Ordinance No. 99-04-13A as presented. Commissioners Stanier and Cobb voted in favor of the motion. Commissioners Rose and Sheffield voted against the motion. Mayor Powell voted in favor of the motion breaking the tie vote. Therefore, the motion carried with a majority vote of 3 to 2 on the second reading.

ORDINANCE NO. 99-04-13 A

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE TOWN OF LAKE LURE**

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WHEREAS, the Town Council of the Town of Lake Lure has determined that there should be a limitation on the number of marinas on Lake Lure for the purpose of limiting the potential number of boats on the lake; and,

WHEREAS, the Lake Lure Town Council, after due public notice, conducted a public hearing on the 16th day of March, 1999, upon the question of amending the lake structures regulations in this respect; and,

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

SECTION ONE: Amend Chapter 94 (the Lake Structures Regulations) to add a new subsection 94.14 (F) as follows:

"(F) There shall be not more than three marinas allowed on the lake; one near the head of the lake, one near the dam, and one in Buffalo Bay."

SECTION TWO: This ordinance shall be effective upon its adoption.

Adopted this 13th day of April, 1999.

ATTEST:

Mary A. Flack, CMC/AAE
Town Clerk

Jack Powell, Mayor

APPROVED AS TO FORM:

J. Christopher Callahan
Town Attorney

<p style="text-align: center;">OLD BUSINESS b. Lake Lure Tours Contract</p>

Rick Coley, President of Lake Lure Tours, asked Council members to consider extending the concession agreement for the scenic passenger boat service until December 1, 2003 (5-years) with an option to cancel the contract after December 1, 2000 with a 12-month advance notice. Mr. Coley said the concession agreement between LLT and the town expires in December 2000. The concession agreement was renewed at the December 1998 town meeting. He explained that a 12-month notice would give LLT the ability to create and implement a reasonable exit strategy in closing a business.

Attorney Callahan said there is a good reason for treating the Lake Lure Tours totally different than the beach and marina. He explained the Lake Lure Tours is a nonexclusive concession to operate a scenic passenger boat service out on the waters of Lake Lure. Mr. Callahan said he did not have a problem with the town entering into a five year concession agreement with the Lake Lure Tours for the scenic boat service. Mr. Callahan recommended the town not combine the beach and marina agreement together with the boat service concession agreement.

