

**MINUTES OF THE REGULAR MEETING OF THE LAKE LURE TOWN COUNCIL
HELD TUESDAY, APRIL 12, 2005 7:00 P.M. AT THE LAKE LURE MUNICIPAL CENTER**

PRESENT: Mayor Jim Proctor
Commissioner Blaine Cox
Commissioner Lea Hullender
Commissioner Dick McCallum
Commissioner Chuck Watkins

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

ABSENT: N/A

CALL TO ORDER

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

INVOCATION

Town Attorney Callahan gave the invocation.

APPROVE THE AGENDA

After discussion, Commissioner Watkins made a motion to approve the agenda as amended. Agenda item 11a was removed from the agenda at the request of the town's auditor Robert Koone not being able to attend this meeting. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

PUBLIC HEARING - CONSIDER AMENDMENTS TO THE TOWN OF LAKE LURE ZONING REGULATIONS, TITLE IX, CHAPTER 92, RELATING TO NON-CONFORMING LOTS OF RECORD, NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, NON-CONFORMING USES OF MAJOR STRUCTURES, AND NON-CONFORMING CHARACTERISTICS OF USE

Public notices were duly given and published in the Forest City Daily Courier newspaper.

Mayor Proctor opened the public hearing regarding proposed Ordinance No. 05-04-12 amendments to Title IX, Chapter 92, relating to non-conforming lots of record, non-conforming uses of land, non-conforming structures, non-conforming uses of major structures, and non-conforming characteristics of use.

Community Development Administrator Shannon Baldwin gave a brief overview of the proposed changes by the Zoning and Planning Boards. Mr. Baldwin said the Zoning and Planning Board recommends approval of the proposed amendments to Ordinance No. 05-04-12.

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The Mayor invited citizens to speak during the hearing and no one requested to speak.

After discussion, Commissioner McCallum made a motion to close the public hearing. Commissioner Hullender seconded the motion and the vote of approval was unanimous.

ADOPT ORDINANCE NO. 05-04-12 AMENDING THE TOWN OF LAKE LURE ZONING REGULATIONS, TITLE IX, CHAPTER 92, RELATING TO NON-CONFORMING LOTS OF RECORD, NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, NON-CONFORMING USES OF MAJOR STRUCTURES, AND NON-CONFORMING CHARACTERISTICS OF USE

After discussion, Commissioner Hullender made a motion to approve Ordinance No. 05-04-12 as presented. Commissioner Cox seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 05-04-12

AN AMENDMENT TO TITLE IX, CHAPTER 92, THE ZONING REGULATIONS OF THE TOWN OF LAKE LURE RELATING TO NON-CONFORMING LOTS OF RECORD, NON-CONFORMING USES OF LAND, NON-CONFORMING STRUCTURES, NON-CONFORMING USES OF MAJOR STRUCTURES, AND NON-CONFORMING CHARACTERISTICS OF USE.

WHEREAS, the Town of Lake Lure Zoning and Planning Board, upon the request of the Town Council and after a thorough review of the Zoning Regulations, has recommended an amendment to the provisions of the regulations relating to all forms of non-conformities; and

WHEREAS, the Lake Lure Town Council, after due notice, conducted a public hearing on the 12th day of April, 2005, upon question of amending the zoning regulations 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 ALL COUNCILMEN VOTING IN THE AFFIRMATIVE:

SECTION ONE. Delete § 92.101, "Nonconforming Uses" in its entirety and replace it with the following:

Section 92.101 NONCONFORMING USES

- (A) Intent. Within the districts established by these zoning regulations or amendments that may later be adopted there may exist (a) lots, (b) structures, (c) uses of land or water and structures, and (d) characteristics of use which were lawful before these zoning regulations were adopted or amended, but which would be prohibited, regulated, or restricted under the terms of these zoning regulations or future amendments. It is the intent of these zoning regulations to permit these non-conformities to continue until they are voluntarily removed or removed as required by these zoning regulations, however, such non-conformities shall not be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

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Non-conforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A non-conforming use of a structure, a non-conforming use of land or water, or a non-conforming use of a structure and land or water in combination shall not be extended or enlarged after the effective date of these zoning regulations or its amendment by attachment on structures or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature or characteristic which would be prohibited generally in the district involved.

To avoid undue hardship, nothing in these zoning regulations shall be deemed to require a change in the plans, construction or designated use of any building for which a valid permit has been approved prior to the effective date of adoption or amendment of these zoning regulations.

- (B) Nonconforming Lots of Record. This category of nonconformance consists of lots for which plats or deeds have been recorded in the County Register of Deeds, which at the time of the adoption of this chapter, or any amendment thereto, fail to comply with the minimum area or width requirements of the districts in which they are located. Any such nonconforming lot may be used for any of the uses permitted in the district in which it is located provided that:
- (1) Where the lot area is not more than 20 percent below the minimum specified in this chapter, and other dimensional requirements are otherwise complied with, the Zoning Administrator is authorized to issue a certificate of zoning compliance.
 - (2) Where the lot area is more than 20 percent below the minimum specified in this chapter or other dimensional requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions in order to protect adjacent properties to the maximum extent possible.
- (C) Non-conforming Uses of land (or Land with Minor Structures). Where, at the effective date of adoption or amendment of these zoning regulations, lawful use of land exists which would not be permitted by these zoning regulations, and where such use involves no minor individual, permanently fixed structure with a replacement cost exceeding \$1,000 and no combination of permanently fixed structures with a replacement cost as high as \$4,000, the use may be continued so long as it remains otherwise lawful, provided:
- (1) *Enlargement, Increase, Intensification.* No such non-conforming use shall be enlarged, increased, intensified or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of these zoning regulations.
 - (2) *Movement.* No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of these zoning regulations.
 - (3) *Discontinuance.* If any such non-conforming use ceases for any reason (except when governmental action impedes access to the premises) for a period of more than 12 consecutive months, any subsequent use of such land shall conform to the regulations specified by these zoning regulations for the district in which such land is located.
 - (4) *Subdivision or Structural Additions.* No land in non-conforming use shall be subdivided, nor shall any structures be added on such land, except for the purposes

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and in a manner conforming to the regulations for the district in which such land is located; provided, however, that subdivision may be made which does not increase the degree of non-conformity of the use.

(D) Non-conforming Structures. Where a structure exists lawfully under these zoning regulations at the effective date of its adoption or amendment that could not be built under these zoning regulations by reasons of restrictions on area, residential densities, height, yards, location on the lot, or requirements other than use concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) *Enlargement, Alteration.* No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity;
- (2) *Involuntary Destruction.* Should such non-conforming structure or non-conforming portion of a structure be destroyed by any means other than voluntary removal, it may be reconstructed to the same configuration including density, height, area, setbacks, parking, and the like, as existed prior to destruction
- (3) *Relocation.* Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(E) Non-conforming Use of Major Structures, or of Major Structures and Premises in Combination.

Where, at the effective date of adoption or amendment of these zoning regulations, lawful use of structures, or of structures and premises in combination exists involving an individual, permanently-fixed structure with a replacement cost at or exceeding \$1,000 or a combination of permanently-fixed structures with a replacement cost at or exceeding \$4,000, which use would not be permitted under these zoning regulations, such use may be continued so long as it remains otherwise lawful, provided:

- (1) *Enlargement, Extension, Alteration, etc., of Structures.* No existing structure devoted to a use not permitted by these zoning regulations in the district in which such use is located shall be enlarged, extended, constructed, reconstructed, moved to another location on the property, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- (2) *Extension of Use in Building Manifestly Designed for Such Use.* Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of adoption or amendment of these zoning regulations. Any non-conforming use which occupied a portion of a building not originally so arranged or designed or intended for such use shall not be extended to any other part of the building. No non-conforming use shall be extended to occupy any land outside the building, nor any additional building on the same lot or parcel, not used for such non-conforming use at the effective date of adoption or amendment of these zoning regulations.
- (3) *Change in Tenancy or Ownership.* There may be a change in tenancy, ownership, or management of a non-conforming use.

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- (4) *Change in Use.* If no structural alterations are made, any non-conforming use of a structure, or of a structure and premises in combination, may be changed to another non-conforming use of the same character, or to a more restricted but non-conforming use, provided that the Zoning Administrator shall find that the proposed use is equally or more appropriate to the district than the existing non-conforming use and that the relation of the structure to surrounding properties is such that adverse effects on occupants and neighboring properties will not be greater than if the existing non-conforming use is continued. In permitting such change, the Zoning Administrator may require appropriate condition and safeguards in accordance with the intent and purpose of these zoning regulations.
 - (5) *Change to Conforming Use Requires Future Conformity with District Regulations as to Use.* Any structure, or structure and premises in combination, in or on which a non-conforming use is superseded by a permitted use shall thereafter conform to the regulations as to use for the district in which such structure is located, and the non-conforming use shall not thereafter be resumed nor shall any other non-conforming use be permitted.
 - (6) *Discontinuance.* If any non-conforming use of a structure, or structure and premises in combination, ceases for any reason (except where governmental action impedes access to the premises) for a period of more than 12 consecutive months, any subsequent use shall conform to the regulations for the district in which the use is located.
 - (7) *Subdivision or Structural Additions.* Premises of major structures (having values as indicated in Section (E) above), where such major structures are used for non-conforming purposes as of the effective date of adoption or amendment of these regulations, shall not be subdivided, nor shall any structures be added on such premises, except for purposes and in a manner conforming to the regulations for the district in which such premises are located.
- (F) Non-conforming Characteristics of Use. If characteristics of use, such as residential densities, signs, off-street parking or off-street loading, or other matters pertaining to the use of land and structures are made non-conforming by these zoning regulations as adopted or amended, no change shall thereafter be made in such characteristics of use which increases non-conformity with the regulations set out in these zoning regulations; provided, however, that changes may be made which do not increase, or which decrease such non-conformity.
- (G) Repairs and Maintenance. On any non-conforming structure or portion of a structure and on any structure containing a non-conforming use, ordinary repairs, or repair or replacement of walls, fixtures, wiring, or plumbing, may be done, provided that the cubic content of the structure existing at the date it becomes non-conforming shall not be increased.
- (H) Non-conforming Structures Unsafe Because of Lack of Maintenance. If a non-conforming structure or portion of a structure or any structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance, and is declared by the Rutherford County building inspector to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.
- (I) Non-conforming Structures Unsafe for Reasons Other Than Maintenance. If a non-

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conforming structure or portion of a structure or any structure containing a non-conforming use becomes physically unsafe or unlawful for reasons other than lack of repairs or maintenance, nothing in these zoning regulations shall be deemed to prevent the strengthening or restoring to a safe condition of such building or part thereof declared to be unsafe by the Rutherford County building inspector.

- (J) Structures Conforming as to Use and Location. Where a structure is conforming as to location and use, nothing in these zoning regulations shall be deemed to prevent the strengthening or restoring to a safe condition of such structure or part thereof declared to be unsafe by the official of the Rutherford County building inspector.
- (K) Casual, Temporary, or Illegal Use. The casual, temporary or illegal use of land or structures, or land and structures in combination, shall not be sufficient to establish the existence of a non-conforming use or to create rights in the continuance of such use.
- (L) Uses Under Conditional Use Provisions Not Non-conforming. Any use which is permitted as a conditional use in a district under the terms of these zoning regulations shall not be deemed a non-conforming use in such district, but shall without further action be deemed a conforming use in such district.

SECTION TWO. The Zoning Administrator shall make all the necessary corrections and additions to the Zoning Regulations and shall henceforth enforce the regulations hereby amended.

SECTION THREE. This ordinance shall be effective upon its adoption.

Adopted this 12th day of April, 2005.

ATTEST:

Mary Flack, MMC
Town Clerk

Jim Proctor
Mayor

Approved as to form:

J. Christopher Callahan
Town Attorney

PUBLIC HEARING - CONSIDER REZONING PETITION RZ-05-01 REQUESTING AMENDMENTS TO THE TOWN OF LAKE LURE ZONING MAP TO REZONE 4 LOTS FROM R-1A to R-1 and 18 Lots From R-1A to R-1C

Public notices were duly given and published in the Forest City Daily Courier newspaper.

Mayor Proctor opened the public hearing regarding proposed Ordinance No. 05-04-12B amending the Town of Lake Lure zoning map regarding rezoning petition RZ-05-01 to rezone 4 lots from R-1A to R-1 and 18 lots from R-1A to R-1C.

Community Development Administrator Shannon Baldwin gave a brief overview of the proposed changes by the Zoning and Planning Boards. Mr. Baldwin said the purpose of the

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rezoning request by staff is to bestow proper legal, conforming status upon existing lots.

The Mayor invited citizens to speak during the hearing. Joan Cashion and Richard Laughridge spoke in favor of the proposed changes.

Town Manager H. M. Place explained that the proposed changes were necessary to correct a clerical error made several years ago because of insufficient zoning maps of the area.

After discussion, Commissioner Watkins made a motion to close the public hearing. Commissioner Hullender seconded the motion and the vote of approval was unanimous.

ADOPT ORDINANCE NO. 05-04-12B AMENDING THE TOWN OF LAKE LURE ZONING MAP REGARDING REZONING PETITION RZ-05-01 TO REZONE 4 LOTS FROM R-1A TO R-1 AND 18 LOTS FROM R-1A TO R-1C

After discussion, Commissioner Hullender made a motion to approve Ordinance No. 05-04-12B as presented. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 05-04-12B

AN ORDINANCE AMENDING THE ZONING MAP OF TOWN OF LAKE LURE BY REZONING 4 LOTS FROM R-1A TO R-1 AND 18 LOTS FROM R-1A TO R-1C AS REQUESTED BY REZONING PETITION RZ-05-01

WHEREAS, the Zoning Administrator has determined that the zoning map is in error, showing the incorrect zone classifications on twenty lots in the Lurewoods Manor Subdivision and initiated rezoning petition RZ-05-01 to correct this error; and,

WHEREAS, the Lake Lure Zoning and Planning Board, after due consideration on the 15th of March, 2005, recommended approval of this petition; and,

WHEREAS, the Lake Lure Town Council, after due public notice, conducted a public hearing on the 12th day of April, 2005, on the question of amending the zoning map in this respect and, after further consideration, determined that the rezoning is in the best interests of the Town of Lake Lure;

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: The zoning map referenced in Chapter 92 of the Lake Lure Code of Ordinances is hereby amended to change the lots having County tax PIN numbers 1630783, 1628870, 1628868, 1628869, 1628867, 1630788, 1630789, 1630790, 1630787, 1630786, 1630785, 1630798, 1630791, 1630792, 1630793, 1630794 and 1637256 from R-1A to R-1C, and the lots having County tax PIN numbers 1628865, 1630795, 1630796 and 1630784 from R-1A to R-1.

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

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

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Adopted this 12th day of April, 2005.

Attest:

Mary A. Flack, MMC
Town Clerk

Jim Proctor
Mayor

Approved as to Form:

J. Christopher Callahan
Town Attorney

PUBLIC FORUM

Mayor Proctor invited the audience to speak on any non-agenda item and David Matheny, a resident of Deerwood Drive, requested to speak. Mr. Matheny asked town council to consider granting him permission for the use of town owned accreted land for a lake structure.

After discussion, Commissioner Watkins made a motion to authorize the town manager to write a letter granting permission to David Matheny for use of town owned accreted land for a lake structure. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

CONSENT AGENDA

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

Commissioner McCallum moved, seconded by Commissioner Cox, to approve the consent agenda items as amended. Therefore, the consent agenda, incorporating the following items was unanimously approved:

- a. minutes of March 8, 2005 (regular meeting), and March 16, 2005 (special joint meeting);
- b. a fabric structure permit for Lake Lure Golf and Beach Resort;
- c. a request from Ken Jordan on behalf of the Hickory Nut Gorge Chamber of Commerce to hold a fireworks display on town property (Morse Park) Monday, July 4, 2005, contingent upon the Chamber being responsible for cleaning up debris after this event;
- d. a request from the Hickory Nut Gorge Kiwanis Club to: (1) suspend the town's peddling ordinance for "Memorial Days Festival" being held on May 28-30, 2005 and the "Autumn Festival" held October 15-16, 2005; (2) close a portion of town street temporarily during these events (contingent upon vendors not leaving their vehicles and trailers parked in the closed portion of the street); and (3) use of town property surrounding the Lake Lure Arcade Building including property along Pool Creek for selling crafts and food, fund raising, and music during these events; and
- e. a request from Pastor Larry Sanders on behalf of the Chimney Rock Baptist Church to hold worship services at the Lakeside Chapel located on town property and permitting access to

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the right of the town's former boat landing in order to conduct lakeside services held on Sundays starting May 1, 2005 through October 9, 2005, from 9:00 a.m. until 9:30 a.m.

End of Consent Agenda

UNFINISHED BUSINESS:

a. Consider a Request from Mary Ann Hollifield for the Crafty Tarheels to Hold Craft Shows on Town Property

After discussion, Commissioner Hullender made a motion to approve a portion of the request from Mary Ann Hollifield for the Crafty Tarheels as amended to: (1) hold craft shows on July 2-4, 2005, September 17-18, 2005, and October 8-9, 2005; (2) suspend the town peddling ordinance to allow vendors to sell crafts and food; (3) use of the town community center kitchen area and the grassy area adjacent to the town community center/visitor center and between the town marina; and (4) suspend the town ordinance prohibiting overnight camping for these events to allow one self-contained camper to stay on town property located on the grassy area adjacent to the town community center/visitor center. Commissioner Cox seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

a. Consider a Request from Frank Campbell on Behalf of the Hickory Gorge Chamber of Commerce to Suspend the Town's Alcohol Ordinance in Order to Serve Champagne During a Grand Re-Opening of the Redecorated Lake Lure Visitor's Center

After discussion, Commissioner Cox made a motion to approve a request from Frank Campbell on behalf of the Hickory Nut Gorge Chamber of Commerce to suspend the town's alcohol ordinance in order to serve champagne during a grand re-opening of the redecorated Lake Lure Visitor's Center on Monday, May 23, 2005, starting at 5:30 p.m. and lasting approximately 2 to 2 ½ hours contingent upon the Chamber cleaning up or paying for someone to cleanup after this event and that this event be open to the public. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

b. Consider a Request from Ken Roth on Behalf of Main Street Festivals to Hold a Lake Lure Festival of Arts on Town Property

Several citizens voiced their concerns about certain type of art being displayed in Lake Lure during the Main Street Festival.

After discussion, McCallum made a motion to approve the request from Ken Roth on behalf of Main Street Festivals to: (1) hold a Lake Lure Festival of Arts on September 1-5, 2005 (setup will begin on September 1st); (2) suspend the town peddling ordinance to allow vendors to sell crafts and food; (3) grant permission to put up tents adjacent to town property along the pathway to the lake and throughout Memorial Point to the town's gazebo in order to display art for this festival

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(contingent upon additional fees being paid for the extended use of town property); and (4) have offsite parking locations for festival attendees to be coordinated with the town manager; (5) coordinate with the Police Chief to hire Lake Lure police officers (paid by Ken Roth) to provide security checks and traffic control during this festival; town council requested that local artists be included in this festival; town council also stipulated that this festival not be advertised as a town sponsored event. Commissioner Cox seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

c. Consider Ordinance No. 05-04-12A Amending the Lake Structure Regulations, Title IX, Chapter 94, Creating an Intent Section; Revising Definitions; Modifying Standards for Construction, Cluster Moorings, and Marinas; Expanding the List of Prohibited Uses; Revising the Variance Procedures; and Adding a Section on Compliance

After discussion, Commissioner McCallum made a motion to approve Ordinance No. 05-04-12A as amended. Commissioner Watkins seconded the motion and the vote of approval was unanimous.

ORDINANCE NUMBER 05-04-12A

AN AMENDMENT TO TITLE IX, CHAPTER 94, THE LAKE STRUCTURE REGULATIONS OF THE TOWN OF LAKE LURE, CREATING AN INTENT SECTION; REVISING DEFINITIONS; MODIFYING STANDARDS FOR CONSTRUCTION, CLUSTER MOORINGS, AND MARINAS; EXPANDING THE LIST OF PROHIBITED USES; REVISING THE VARIANCE PROCEDURES; AND ADDING A SECTION ON COMPLIANCE.

WHEREAS, the land covered by the waters of Lake Lure and all land within the designated lake boundary is owned by the Town of Lake Lure; and

WHEREAS, Lake Lure is held in trust by the Town of Lake Lure for the benefit of the citizens of Lake Lure; and

WHEREAS, the Town Council desired to establish regulations governing structures to be erected and maintained within the boundaries of Lake Lure for the purpose of enhancing the health, safety, and welfare of the general public and to preserve the property of the Town and the properties of the land owners;

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

SECTION ONE. Revise Section 94.01 (new language is underlined, language to be deleted is stricken through) to read:

§ 94.01 USE OF LAKE LURE INTENT AND APPLICATION

(A) Intent. The land covered by the waters of Lake Lure and all land within the lake boundary is owned by the Town of Lake Lure. Said lake is held in trust by the Town of Lake Lure for the benefit of the citizens of Lake Lure. Based on the above, the Town Council desires to

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establish regulations governing all structures to be erected and maintained within the boundaries of the lake for the purpose of enhancing the health, safety, and welfare of the general public and to preserve the property of the Town and the properties of upland land owners.

- (B) Application. No structure shall hereafter be erected or maintained within the lake boundary of Lake Lure within the corporate limits of the town and no use made of the water surface and land thereunder or any facility or structure located thereon, except in conformity with the regulations of this chapter, or amendments thereto. Issuance of a permit or certificate for a lake structure does not confer any rights to ownership of land or water owned by the town.

SECTION TWO. Revise those portions of Section 94.02, Definitions, to add, delete or modify the following definitions as indicated:

“Living Quarters.” A room or rooms designed to be used as overnight housing or equipped with furnishings, appliances and accessories that create a domicile.

“Marina.” A facility which provides for rent or lease, more than one covered or uncovered temporary or permanent mooring for water craft.

“Mooring Facility” A location adjacent to the shoreline or any lake structure, equipped with cleats, posts or any other devices intended for the mooring of one or more boats.

“Mooring, Permanent.” A mooring facility for boats that can be occupied at any time.

“Mooring, Temporary.” A mooring facility for boats that can only be occupied during the hours between 6:00 a.m. and 12:00 midnight.

“Temporary Mooring Slip.” A mooring facility for boats that can only be occupied during the hours between 6:00 a.m. and 12:00 midnight.

“Upland Lot.” A lot having a boundary ~~coexistent~~ coexistent with the portion of the shoreline where a lake structure exists or is planned.

SECTION THREE. Revise Section 94.05 as follows:

§ 94.04 LIABILITY INSURANCE

All property owners having structures other than seawalls on Lake Lure (including existing lake structures as well as future lake structures) must at all times keep and maintain in force, at their sole expense, public liability insurance against claims for bodily injury, death or property damage occurring in or about the lake structure in the amount of at least \$500,000 per person occurrence. Prior to applying for a lake structure permit or renewal of a lake structure certificate, proof of this liability insurance must be provided the town pursuant to § 94.03 (A) (7).

SECTION FOUR. Revise those portions of Section 94.05 as follows:

§ 94.05 DESIGN AND CONSTRUCTION STANDARDS

- (B) No structure shall be placed in the water more than 30 feet or one third the distance to the opposite shore, whichever is less, as measured to and from the shoreline. At least one third

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of the waterway must be left unobstructed. ~~The total dimensions of the structure shall not exceed this boundary. No portion of any lake structure shall extend beyond this boundary.~~

- (C) ~~No portion of any structure shall be located closer than 15 feet to any side lot line, as projected into the lake. The total dimensions of the structure shall not encroach upon this boundary.~~ The projection of the lot line shall be a straight line on the same bearing as the lot line. This provision does not apply to sea walls. See also paragraph (M) below regarding boardwalks.
- (D) The maximum width of any boat slip, whether covered or uncovered, shall be 11 feet and a maximum of three such slips shall be allowed contiguous to any upland lot ~~mooring slips shall be allowed for any lake structure or combination of lake structures adjacent to an upland lot~~ which meets the minimum width of 100 front feet. For lots of record with a width of less than 100 front feet and more than 80 front feet at shoreline, two mooring slips shall be allowed for any lake structure or combination of lake structures. This provision does not apply to cluster mooring facilities (see § 94.13) or marinas (see § 94.14).
- (F) Height
- (2) Accessory structures to be used for protection from direct sun and rain may be erected above rooftop decks provided they meet the following standards and are approved by the Lake Structures Appeals Board.
- Desktop Accessory Structure Guidelines:
- (a) Shall not exceed a height of ten feet above the surface of the rooftop deck. Thus, the maximum allowable height of any lake structure that includes a decktop accessory structure is 25 feet.
- (J) ~~No lake structure shall serve as a temporary or permanent living quarters. No lake structure shall be designed, constructed or used as temporary or permanent living quarters.~~
- (K) Satellite dish antennas of not more than ~~24~~ 30 inches in diameter may be installed on lake structures, provided they do not exceed ~~15 feet in height above the shoreline~~ the highest portion of the lake structure to which it is attached.
- (Q) Temporary mooring at commercial and resort locations shall be identified by a sign which states that the mooring may only be occupied during the hours between 6:00 a.m. and 12:00 midnight.

SECTION FIVE. Revise Section 94.13 as follows:

§ 94.13 CLUSTER MOORING FACILITIES

- (A) The Community Development Administrator and the Lake Advisory Committee shall review each lake structure permit application for a cluster mooring facility. The application review will confirm that the proposed facility conforms to these regulations, evaluate its impact on the lake's carrying capacity, and determine that the location will not be adverse to navigation and boating safety or to any nearby residential area. A recommendation based on this review will then be submitted to Council. The Council shall approve or deny the request after examining the report.

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~~(A)~~

(B) Cluster mooring facilities may be installed in lieu of private docks or boathouses adjacent to property that is zoned R-3 or C adjacent to upland lot(s) zoned for resort or commercial use. The same requirements apply to cluster mooring facilities as do to all other lake structures except they must be open (no roofs) shall have no walls or roofs, and have no more than three individual boat slips permanent moorings per 100 front feet at the shoreline of lake front property that is owned by the applicant and that is free of any lake structures (other than sea walls and boardwalks). Existing private docks or boathouses must be removed prior to construction of a cluster mooring facility and no private docks or boathouses can be applied for or constructed adjacent to the upland lot(s) for which a cluster mooring facility has been approved.

- (1) For areas with upland lots that are zoned R-3 for resort use, the lake front property that is used in the formula for determining the number of slips must be contiguous with the site of the proposed cluster mooring facility and the same lake front property must be developed with roads and structures in place prior to review of the application. If any existing mooring facilities are to be included the total slips of the mooring facility, they will be factored into the total slips calculated with the above formula.
- (2) For areas ~~zoned C~~ with upland lots zoned and utilized for commercial purposes (C-1), only temporary moorings slips shall be allowed. A maximum of three craft owned by the operators of the commercial establishment may be permanently moored at the establishment's cluster mooring facility.

SECTION SIX. Delete Section 94.12:

SECTION SEVEN. Revise those portions of Section 94.14 as follows:

§ 94.14 MARINAS

- (A) The Zoning Administrator shall review each lake structure permit application for a cluster mooring facility to confirm that the proposed facility conforms to these regulations and to approve its location with regard to navigation and boating safety. The Community Development Administrator and the Lake Advisory Committee shall review each lake structure permit application for a marina. The review will confirm that the proposed facility conforms to these regulations, evaluate its impact on the lake's carrying capacity, and determine that the location will not be adverse to navigation and boating safety or to any nearby residential area. A recommendation based on this review will then be submitted to Council. The Council shall approve or deny the request after examining the report.
- (B) A marina may have not more than five permanent or temporary mooring slips for each 100 feet of shoreline, provided this limitation shall not apply to any marina owned by the Town of Lake Lure. Marinas may be installed adjacent to upland lot(s) zoned for commercial or resort use. The same requirements apply to marinas as do to all other lake structures except they must be open (no roofs) shall have no walls or roofs, and may have not more than five permanent or temporary mooring slips for each 100 feet of shoreline that is owned by the applicant and that is free of any lake structures (other than sea walls and boardwalks). The lake front property that is used in the formula for determining the number of slips must be contiguous with the site of the proposed

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marina. Existing private docks or boathouses must be removed prior to construction of a marina and no private docks or boathouses can be applied for or constructed adjacent to the upland lot(s) that are associated with a marina. These limitations shall not apply to any marina owned by the Town of Lake Lure.

- (C) ~~Permanent mooring slips may be rented or leased for the mooring of any watercraft with a valid permit issued by the town. Slips and dock space may be rented or leased for the permanent mooring of any watercraft with a valid boat permit issued by the town for the current year. The town may assess the marina owner an annual commercial use fee for each permanent mooring leased or rented.~~

SECTION EIGHT. Revise those portions of Section 94.15 as follows:

§ 94.15 PROHIBITED USES

The following uses or activities shall be prohibited unless written approval is given by the ~~Lake Structures Appeals Board~~ Town Council.

- (A) Any activity such as dredging or filling which alters the shoreline other than as required by action of the Town Council (~~see also § 94.12~~).
- (G) ~~Mooring~~ The permanent or temporary mooring of a boat or any other floating object alongside a lake structure in such a way that it may temporarily or permanently extends beyond the boundaries established in §94.05 and restricts the passage of boats.
- (H) The permanent mooring of more than 3 motorized boats at any one lake structure or combination of lake structures (other than a marina or cluster mooring facility) adjacent to one upland lot with the minimum required width of 100 front ft. at shoreline.
- (I) The permanent mooring of more than 2 motorized boats at any one lake structure or combination of lake structures (other than a marina or cluster mooring facility) adjacent to one upland lot that is a lot of record with a width of less than 100 front feet and more than 80 front feet at shoreline.
- (J) The permanent mooring at a cluster mooring facility of more than 3 motorized boats per 100 front ft. at shoreline of upland lot(s) adjacent to a cluster mooring facility.
- (K) The permanent mooring at a marina of more than 5 motorized boats per 100 front ft. at shoreline of upland lot(s) adjacent to a marina.
- (L) The permanent mooring of any commercial boats at a lake structure with an upland lot that is not zoned in accordance with or having a conditional use permit to comply with Section 1.59 of the Lake Use Regulations requirements for lake commercial licensing and supporting criterion.
- (M) The use of any lake structure as a temporary or permanent living quarters.
- (N) The rental of more than one mooring at a dock, boathouse or any other lake structures in the manner of a marina when the adjacent upland lot is zoned R-1.

SECTION NINE. Revise those portions of Section 94.16 as follows:

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§ 94.16 VARIANCES

- (A) ~~Because of great differences in lot size, property topographies, location of adjacent homes, shoreline and road contours, location of ledges and other variables, the Lake Structures Appeals Board may grant a variance in special situations if the board believes equity so demands and no neighbor (adjoining property owner or other land owner whose projected boundary lines are affected) will have his view of the lake from his house obstructed or the ability to construct or alter lake structures within his projected boundaries impaired. A variance from the maximum height of structures may not be considered. Any exception to these regulations shall consider the health, safety, and welfare of the general public. Upon application, the Lake Structures Appeals Board may grant in specific cases such variance from the terms of these regulations as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of these regulations will, in an individual case, result in practical difficulty or unnecessary hardship. The variance may be permitted as long as the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the Lake Structures Appeals Board that special or unusual conditions exist.~~
- (C) ~~Requests for variance shall be filed with the Zoning Administrator~~ Community Development Administrator not less than 14 calendar days prior to the meeting of the Lake Structures Appeals Board at which the request is to be heard. The application shall be accompanied by a survey of the property involved and sufficient information in the form of a written description and plans drawn to scale to show the purpose of the variance.

SECTION TEN. Add a new Section 94.17 as follows:

§ 94.17 COMPLIANCE

In the event any lake structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or used in violation of these regulations, the Community Development Administrator or any other appropriate town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

SECTION ELEVEN. The Community Development Administrator shall make all the necessary corrections and additions to the Lake Structures Regulations and shall henceforth enforce the regulations hereby amended.

SECTION TWELVE. This ordinance shall be effective upon its adoption.

Adopted this 12th day of April, 2005.

ATTEST:

Mary Flack, MMC
Town Clerk

Jim Proctor
Mayor

Approved as to form:

J. Christopher Callahan
Town Attorney

NEW BUSINESS:

d. Consider a Request from Genevieve Helms on Behalf of Lake Lure Adventure Company to Moore Five Boats Adjacent to Lake Structure

Town Council reviewed a request from Genevieve Helms on behalf of Lake Lure Adventure Company to moor five boats adjacent to their lake structure. Ms. Helms asked that Town Council make an exception or grant a variance to the regulations which only allow three boats to be moored at their lake structure, based on the fact of historic use of the property as commercial and the cost of mooring the boats elsewhere.

Mayor Proctor suggested that Lake Lure Adventure Company petition to have the area considered as a marina. Mayor Proctor said the regulations stipulate a limit on the number of marinas and that limit has been reached, but given the property's proximity to an existing marina (Dam Marina) there may be a possible solution. It was suggested by town council members that Mrs. Helms submit her request to the Lake Advisory Committee.

NEW BUSINESS:

e. Consider Awarding a Bid for the 2005 FEMA Dredging Project

Town Manager Place read into the record his memorandum of April 6, 2005 regarding bids for the 2005 FEMA dredging project. (Copy of memorandum attached).

After discussion, Commissioner Cox made a motion to award a bid for the 2005 FEMA Dredging Project to Lake Norman Dredging and Marine Construction of Mooresville, North Carolina in the amount of \$500,000.00 (lowest bidder) and authorize the town manager to negotiate a contract. Commissioner Watkins seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

f. Appoint Town Representatives to Serve on the Isothermal RPO Technical Coordinating Committee and the Isothermal Transportation Advisory Committee

Town Manager Place read into the record his memorandum of March 29, 2005 regarding representation on Isothermal Rural Planning Organization. (Copy of memorandum attached).

After discussion, Commissioner Cox made a motion to appoint Town Manager H. M. Place III to serve as the town's representative on the Isothermal Rural Planning Organization's

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Technical Coordinating Committee, appoint Mayor Jim Proctor to serve as the town's representative on the Isothermal Rural Planning Organization's Transportation Advisory Committee and appoint Mayor Pro tem Dick McCallum to serve as the town's alternate representative during the mayor's absence from the TAC meetings. Commissioner Hullender seconded the motion and the vote of approval was unanimous.

NEW BUSINESS:

g. Consider a Request from Bill and Nancy McNary to Purchase Certain Town Property

Town Manager Place read into the record his memorandum of March 22, 2005 regarding an offer from Bill and Nancy McNary to purchase town property. (Copy of memorandum attached).

After discussion, Commissioner Cox made a motion to authorize the advertisement of an offer of \$1,500.00 received from Bill and Nancy McNary for upset bids to purchase certain town owned property (.74 acre tract; tax map 502-1-1 and recorded in Deed Book 497, Page 305, Rutherford County Registry) adjacent to Sunset Cove Road and declare this property to be surplus to the needs of the town with the stipulation that the description for this particular property be provided by the buyer. Commissioner McCallum seconded the motion and the vote of approval be unanimous.

NEW BUSINESS:

h. Consider a Request from Rudy and Susan Esposito to Purchase Certain Town Property

Town Manager Place read into the record his memorandum of March 22, 2005 regarding an offer from Rudy and Susan Esposito to purchase town property. (Copy of memorandum attached).

After discussion, Commissioner Watkins to authorize the advertisement of an offer of \$29,500.00 received from Rudy and Susan Esposito for upset bids to purchase certain town owned property (.3 acre parcel adjacent to Memorial Highway US64/74A; tax map 516-1-12) and declare this property to be surplus to the needs of the town contingent upon an appraisal and survey being provided prior to advertisement. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

STAFF REPORTS

Town Manager Place reported on the following:

1. Mr. Place said he will begin contacting property owners to get easement right-of-ways for the new water line around Tryon Bay Circle.
2. Mr. Place stated that he has received appraisals for three town-owned parcels that were commissioned pursuant to offers to purchase. They include a small lake (river) front piece adjacent to the campground previously owned by Lou Hughes, a strip of golf

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course property running from the Camp Lurecrest access road down to the lake, and a lot across Charlotte Drive from the golf course. The town council authorized the appraisals for the river front and golf course parcels in 2002. Mr. Place said he contacted a local appraiser in January 2003 to do the surveys, but after almost two years of delay on his part, Mr. Place offered the job to Gene Booth of Rutherfordton.

Mr. Place explained that Mr. Hughes had asked to purchase the river front parcel because of his pool deck and sign encroached on town property. Mr. Hughes offered the town \$2,000.00 for this particular parcel, but in the interim since then, Mr. Hughes sold the campground making his offer moot. Mr. Place said according to the appraisal this parcel is worth between \$2,000.00 and \$10,000.00, depending on the purchaser (Copy of letter from Gene Booth attached regarding appraisals).

Mr. Place reported on the status of the golf course property. He informed town council members that he had several discussions with Jerry Martin, Camp Lurecrest's executive director, about a sale or swap of the land in exchange for their installing an alternate water supply (pumps, pipes, etc.) for the golf course. Mr. Place said Mr. Martin is aware of the appraisal and that he expects to hear from Mr. Martin in the near future. No specific offer has been made at this time to purchase this particular piece of property. Mr. Booth appraised this parcel at \$78,000.00.

Mr. Place said the town received an offer of \$4,000.00 from Paul Everhart and David Ray last July, 2004 to purchase a lot (golf course property) across from Charlotte Drive. The Lake Lure Golf Course Advisory Committee has recommended that this lot be retained by town as a buffer from the driving range.

After discussion, town council directed the town manager to contact adjacent property owners to see if there is an interest for small lake (river) front piece adjacent to the campground previously owned by Lou Hughes, and a strip of golf course property running from the Camp Lurecrest access road down to the lake.

Town Council members agreed to retain the golf course property across from Charlotte Drive as recommended by the Lake Lure Golf Course Advisory Committee.

2. The Rutherford County Transportation Committee plans to lobby the state regarding the construction dates for the widening of US 221 to four lanes. At present, the NCDOT Traffic Improvements Program shows the segment of that highway from the South Carolina line to a point north of Rutherfordton to begin construction in 2009 (project R- 2233). The committee hopes to have the portion of that road south of US 74 split away from the rest of the project and advanced in the TIP to begin as early as possible to provide much needed access from I-85 in SC to the industrial park in the south county. Part of their logic is that the segment north of US 74 requires a complete realignment through town, a complicated and costly project. Harold Stallcup, the chairman of the committee has asked each municipality in the county to send a letter to the NCDOT in support of this proposal. Mr. Place agree to draft a letter for the mayor's signature.

A motion was made by Commissioner Cox to direct the town manager to draft a letter to send to the the North Carolina Department of Transportation regarding the construction of US 221 and authorized the mayor to sign on behalf of the town. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

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3. Mr. Place said the Capital Improvement Plan (CIP) requests from the department heads have all been reviewed and he is in the process of preparing the detail sheets for your consideration. Mr. Place requested that town council schedule a special workshop meeting to review a draft CIP with town staff members.

After discussion, Commissioner Watkins made a motion to scheduled a special workshop meeting on Wednesday, April 27, 2005, following the Lake Lure Marine Commission meeting, after 1:00 p.m. in the council meeting room of the Lake Lure Municipal Center to review a draft Capital Improvements Program with town staff members. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

4. Mr. Place said the town received a request from the Veterans Hospital and Mr. Lin Reed to waived the prohibition of fishing from the dock behind town hall. They are sponsoring a disabled veterans fishing tournament this coming Saturday and use of the dock with its access ramp will be a great benefit to many of the participants. The staff have no objection to this request.

After discussion, Commissioner Hullender made a motion to approve the request from Beverly Bradigan and Lin Reed on behalf of the hospitalized veteran patients at the Veterans Affairs Medical Center at Asheville, North Carolina to suspend the town's regulations prohibiting fishing from the dock behind town hall for a disabled veteran's fishing tournament being held on Saturday, April 16, 2005. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

5. Mr. Place said the town has received a request from Dick and Joy Knight to authorize the renaming of their street from Isaac Walton Court to Knight Hollow Lane. Mr. Place explained that this is a short cul-de-sac running south from Memorial Highway, beside the log home sales office, across from Dr. Burch. This little road does not even show up on the street maps and serves only the Knight's house at the end, at least for now. Mr. Place said Fire Coordinator Ron Morgan and Police Chief Mike Bustle do not object to this change nor does he. Mr. Place said neither name is listed in the Rutherford E-911 directory. Mr. Place asked town council to authorize the change.

A motion was made by Commissioner Watkins to approve the request from Dick and Joy Knight to rename their street from Isaac Walton Court to Knight Hollow Lane. Commissioner Hullender seconded the motion and the vote of approval was unanimous.

6. Mr. Place said he spoke with Debbie Vick, the NCDOT Enhancement Unit Project Manager regarding the town pedestrian walkway project. The application was approved a year ago and the plans were submitted for review by McGill, Associates last fall, but the town has not had any official word about the status of the review. Ms. Vick informed Mr. Place that they are still waiting for comments from the district engineer to determine if the new bridge construction will impact or be impacted by the walkway project. Mr. Place said hopefully, Ms. Vick will get the project underway, soon.
7. Mr. Place said the county was getting ready to take new aerial photos. Community Development Administrator Shannon Baldwin informed him that the state has stepped in and will take this program over for the entire area, and not just Rutherford County. Mr. Place said this came about after the considerable damage sustained last year by

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multiple storms that affected this region. The state has determined that accurate up-to-date photogrametric maps are essential to emergency management planning and they will pay the bill for the counties. The photos have been taken and a representative of Rutherford County indicated that the town may have access to them as early as this fall.

8. Mr. Place distributed a summary of boat permits showing that as of today, the town has issued 533 permits of all various types. (Copy of summary attached).
9. Mr. Place said the Lake Lure Inn has reopened this past weekend after extensive remodeling.

COUNCIL COMMENTS

Council members commented on the improvements made to the Lake Lure Inn.

Mayor Proctor gave an update on the status of the state park for the gorge. On March 24, a Senate bill to authorize additions to the North Carolina parks system passed unanimously. Senator Walter Dalton, acted as co-sponsor for the bill. Bobby England is one of the primary sponsors of an identical companion bill in the State House, which is still pending. Currently, the Nature Conservancy owns and protects several pieces of property in the Hickory Nut Gorge, the most prominent being the 800 acre in Rumbling Bald Preserve.

Commissioner Cox reported on storm damage and trees down around the lake.

ADJOURNMENT

With no further items of discussion, Commissioner Cox made a motion to adjourn the meeting at 9:32 p.m. Commissioner McCallum seconded the motion and the vote of approval was unanimous.

ATTEST:

Mary A. Flack, MMC
Town Clerk

Mayor Jim Proctor