

LAKE LURE TOWN COUNCIL REGULAR MEETING PACKET

Tuesday, January 11, 2011



Mayor Bob Keith

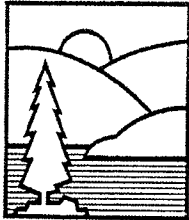
Commissioner Mary Ann Silvey

Commissioner John Moore

Commissioner Wayne Hyatt

Commissioner Linda Turner

Agenda Item: 8b



Incorporated 1927

TOWN OF LAKE LURE

Community Development Department

TO: Town Council
FROM: Shannon Baldwin *SB*
DATE: January 5, 2011
RE: Resolutions Granting Permission to Apply for Grants for the Town Center Master Plan

The Town Center Focus Group has identified three potential funding sources for the Town Center Master Plan:

- Z. Smith Reynolds Foundation
 - AMOUNT: Asking up to \$35,000 per year for up to two years
 - MATCH: The ZSR Board of Trustees sometimes requires that some or all of a grant be matched with funds from other sources. If a grant has a matching requirement, it will be stated in the grant resolution that the grantee receives upon the grant being awarded.
 - CONDITIONS/ REQUIRMENTS: If awarded, then the Foundation would require submittal of a progress report and final report.
- ✓ • Clean Water Management Trust Fund
 - AMOUNT: Asking for \$50,000 with a minimum local match of 20%
 - MATCH: If awarded, then a minimum local match of 20% is required. The application will be more competitive if the local match is higher.
 - CONDITIONS/ REQUIRMENTS: If awarded, then the Town would be responsible for ensuring that all deliverables outlined in the contract scope of work are completed on schedule, reports are submitted on a quarterly basis, and all necessary invoices are submitted for reimbursement.

In order to move forward with the application process, we have prepared three resolutions for consideration from the Town Council that grant permission to apply for funding.

RESOLUTION NO. 11-01-11

**TOWN OF LAKE LURE
RESOLUTION GRANTING THE APPLICANT PERMISSION TO APPLY FOR A
GRANT FROM THE CLEAN WATER MANAGEMENT TRUST FUND**

WHEREAS, at its regular meeting on the 11th day of January, 2011, the Town Council of the Town of Lake Lure stated their intent to apply for grants from the Clean Water Management Trust Fund ("the Fund") to assist in developing a Town Center Master Plan; and

WHEREAS, if the North Carolina Clean Water Management Trust Fund approves funding of the project as described in this grant application, the Fund will prepare a Grant Contract for execution by the Town of Lake Lure; and

WHEREAS, the Grant Contract will specify the terms and conditions under which the Fund will provide the grant funding; and

WHEREAS, the Grant Contract will require the Town of Lake Lure to perform certain functions and obligations in order to carry out the work described in this grant application.

WHEREAS, the Town of Lake Lure has officially adopted the following mission statement:

"Lake Lure, the gem of the Carolinas, is a mountain lake community that has a harmonious balance of interests of our citizens, businesses and visitors, achieved through open communication and managed growth that emphasizes fiscal responsibility and stewardship of our natural beauty and environment."

WHEREAS, it is a goal of the Town of Lake Lure 2027 Comprehensive Plan to create a Town Center Master Plan to carefully guide the development of area to preserve the town's character through scale, architecture, and landscaping to maximize business opportunity as further outlined in Policy ED-2-2.1 and ED-1-3.1.

WHEREAS, the Town Center Master plan will consist of a compilation of coordinated and integrated maps, drawings, plan vignettes, renderings, illustrations, reports, and recommendations to serve as realistic guidance for the future of Lake Lure's Town Center, building upon the town's recently adopted 2007-2027 Comprehensive Plan. It will focus on the town's economic development, transportation and circulation network, utility infrastructure, parks and recreation, community services and facilities, natural environment and open space, land use and growth management, and elements related to the enhancement of the community's appearance.

WHEREAS, the General Assembly recognizes that a critical need exists in this State to clean up pollution in the State's surface waters and to protect and conserve those waters that are not yet polluted and therefore created the Clean Water Management Trust Fund per Article 18, §113A- 251 through 259 of the North Carolina General Statutes.

NOW, THEREFORE, BE IT RESOLVED: that the Town Council of the Town of Lake Lure assures the North Carolina Clean Water Management Trust Fund that it understands the functions and obligations to which the Town of Lake Lure is committing itself in order to carry out the work described in this grant application, and further agrees that the Town of Lake Lure will proceed with diligence to perform those functions and obligations to accomplish the work described in this grant contract.

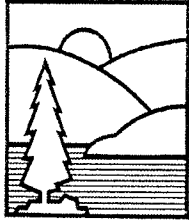
Adopted this 11th day of January, 2011.

ATTEST:

Mary A. Flack, Town Clerk

Bob Keith, Mayor

Agenda Item: 8c



Incorporated 1927

TOWN OF LAKE LURE

Community Development Department

TO: Town Council
FROM: Shannon Baldwin *SB*
DATE: January 5, 2011
RE: Resolutions Granting Permission to Apply for Grants for the Town Center Master Plan

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- ✓ • Z. Smith Reynolds Foundation
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 - CONDITIONS/ REQUIRMENTS: If awarded, then the Foundation would require submittal of a progress report and final report.
- Clean Water Management Trust Fund
 - AMOUNT: Asking for \$50,000 with a minimum local match of 20%
 - MATCH: If awarded, then a minimum local match of 20% is required. The application will be more competitive if the local match is higher.
 - CONDITIONS/ REQUIRMENTS: If awarded, then the Town would be responsible for ensuring that all deliverables outlined in the contract scope of work are completed on schedule, reports are submitted on a quarterly basis, and all necessary invoices are submitted for reimbursement.

In order to move forward with the application process, we have prepared three resolutions for consideration from the Town Council that grant permission to apply for funding.

RESOLUTION NO. 11-01-11A

**TOWN OF LAKE LURE
RESOLUTION GRANTING THE APPLICANT PERMISSION TO APPLY FOR A
GRANT FROM THE Z. SMITH REYNOLDS FOUNDATION**

WHEREAS, at its regular meeting on the 11th day of January, 2011, the Town Council of the Town of Lake Lure stated their intent to apply for grants to assist in developing a Town Center Master Plan; and

WHEREAS, the Town of Lake Lure has officially adopted the following mission statement:

“Lake Lure, the gem of the Carolinas, is a mountain lake community that has a harmonious balance of interests of our citizens, businesses and visitors, achieved through open communication and managed growth that emphasizes fiscal responsibility and stewardship of our natural beauty and environment.”

WHEREAS, it is a goal of the Town of Lake Lure 2027 Comprehensive Plan to create a Town Center Master Plan to carefully guide the development of area to preserve the town’s character through scale, architecture, and landscaping to maximize business opportunity as further outlined in Policy ED-2-2.1 and ED-1-3.1.

WHEREAS, the Town Center Master plan will consist of a compilation of coordinated and integrated maps, drawings, plan vignettes, renderings, illustrations, reports, and recommendations to serve as realistic guidance for the future of Lake Lure’s Town Center, building upon the town’s recently adopted 2007-2027 Comprehensive Plan. It will focus on the town’s economic development, transportation and circulation network, utility infrastructure, parks and recreation, community services and facilities, natural environment and open space, land use and growth management, and elements related to the enhancement of the community’s appearance.

WHEREAS, the mission of the Z. Smith Reynolds Foundation is to improve the quality of life of the people of North Carolina with specific focus on community and economic development, environment, pre-collegiate education, strengthening democracy and social justice and equity.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Lake Lure that the applicant has the authority to apply for grants and funding sources from the Z. Smith Reynolds Foundation.

Adopted this 11th day of January, 2011.

ATTEST:

Mary A. Flack, Town Clerk

Bob Keith, Mayor

Agenda Item: 8e

RESOLUTION NO. 11-01-11B

**ESTABLISHMENT OF A FIRE EQUIPMENT
CAPITAL RESERVE FUND**

WHEREAS, there is a need in the Town of Lake Lure, North Carolina to purchase Fire Equipment; and

WHEREAS, the Town must bear the cost to purchase Fire Equipment without placing a large debt burden upon the operational budget; and

WHEREAS, purchases may be scheduled in order to benefit from favorable market conditions.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:

Section 1. The Governing Board hereby creates a Capital Reserve Fund for the purpose of purchasing Fire Equipment.

Section 2. This fund will remain operational until the Governing Board decides to disband the fund.

Section 3. The board will appropriate fire revenues, such as no-man's land tax, or other amounts deemed necessary by the Governing Board. All contributions to or appropriations from the fund will be approved by the Governing Board.

Section 4. This resolution shall become effective upon its adoption.

Adopted this 11th day of January, 2011.

ATTEST:

Mary A. Flack, Town Clerk

Bob Keith, Mayor



Incorporated 1927

Town of Lake Lure

P. O. Box 255 • Lake Lure, NC 28746-0255 • 828/625-9983 • FAX 828/625-8371

MEMORANDUM

To: Mayor & Town Council
From: Sam A. Karr, Finance Director *[Signature]*
Subject: Budget Adjustment & Establish a Capital Reserve for Fire Equipment
Date: January 6, 2011

As you are all aware, Fire Chief Ron Morgan, has been requesting the Town to purchase a new fire engine in the last couple of budgets. There have been some discussions recently in purchasing older equipment through Govdeals or surplus' from other units to be funded through donations and/or "No Man's Land Tax"-payment for small rural areas that are outside city limits.


Since the town's operational budget is from July 1-June 30, any unspent money reverts back to the General Fund fund balance to be used for future appropriations. The beauty of a capital reserve fund is that it is not set for just for a fiscal period-one year. The Capital Reserve Fund can be funded on a continued basis or left alone until council decides to use the funds for that specific purchase. For example, we already have a capital reserve fund for silt removal which we build up funds until we are ready to use them.

If the establishment of a Capital Reserve for Fire Equipment is acceptable, we would like to purpose a start up funding by transferring \$4,000 from the check we received from the county-No Man's Land Tax which is not a budgeted item. The design is to build up this reserve to lessen the burden on the operational department budgets.

Xc: Chris Braund, Town Manager
Ronald J. Morgan, Fire Chief

Agenda Item: 10b

Memo

Date: 1/6/2011
To: Town Council, Town Manager, Mayor and Town Clerk
From: Andi Calvert, Customer Service Clerk 
RE: Gazebo Rental Rates

When renting the Gazebo the renter is required to pay \$550 at the time the area is booked. The rental fee itself is \$300. The other \$250 is a deposit. The \$250 deposit is refunded by mail after the event as long as there is no trash or damage left at the Gazebo.

Mary-Lu Elias is asking Town Council to waive these fees for a "Blessing of the Animals" Service to be held on Sunday, June 12, 2011. We are holding the Gazebo for this date for this until a decision is made by Town Council.

AC

1/6/2011

Town Clerk

From: M-Lu E

Sent: Friday, December 10, 2010 6:20 PM

Subject: agenda item for 1/11/11 Council meeting

Hi Mary,

Merry Christmas to you & yours.

I have an item I'd like to be added to the agenda for the Jan. meeting please.

Consideration of waiving the rental fee, and if waived,
for a "Blessing of the Animals" service

on Sunday, June 12,

time to be confirmed but approx. from 2:00 - 4:00 or 4:00 - 6:00 PM — Gazebo

This event would be a benefit requesting donations of food or funds directly to

Rthrdfr Co.-based/local animal rescue & care groups

and would invite participation from all of the church congregations in the HNG area, local residents w/in 15 miles and certainly the schoolchildren.

As Publicity & Promotions Elder at the Fairfield Mtns. Chapel, I'm opting for safer, warmer weather for the HNG event by doing it in June.

If you've never heard of such a service, it is typically done as close to Oct. 4, the birthday of St. Francis of Assisi, the patron saint of animals. He was a lover of all creation and a champion of justice. He is so well known, the legacy of his love for animals is celebrated in nearly every religious faith for how our pets bless us each day with unconditional love, devotion, and joy.

All of the ministers of each church will be invited to participate in the Blessing and share the date with their respective congregations. The service is simple and a bonding experience for all animal owners as well as wonderful 'ice-breaker' for newcomers.

From the Episcopal site, I've attached a sample service.

Thanks for your help and I look forward to your reply.

Mary-Lu Elias

Campobello, SC
29322

:-) M-LuE

When you're down to nothing, God is! up to something.

Sorrow looks back, Worry looks around, but Faith looks up!

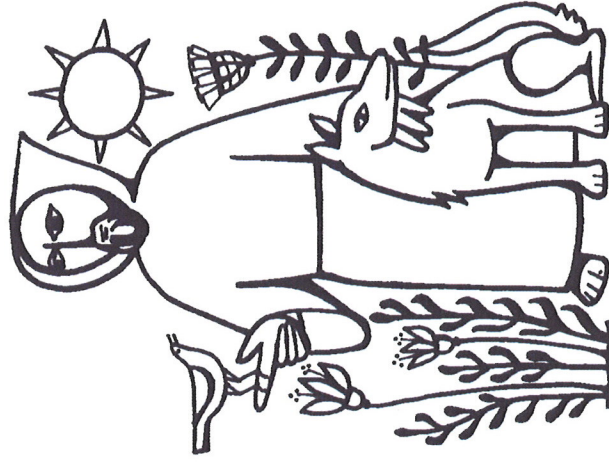
Be blessed and be a blessing!

In each journey of your life you must be where you are.

You may only be passing through on your way to somewhere else more important.

Nevertheless, there is purpose in where you are right now.

1/5/2011



BLESSING OF THE ANIMALS

ST. FRANCIS DAY



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www.epicenter.org/christianformation

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BLESSING OF THE ANIMALS LITURGY

Call to Worship

Animals and people gather around a small table or altar in an appropriate place.

Opening Hymn

1982 Hymnal # 405

All things bright and beautiful

Officiant: Let us pray.

Most high, omnipotent, good Lord, grant your people grace to renounce gladly the vanities of this world; that, following the way of blessed Francis, we may for love of you delight in Christ our Lord, who lives and reigns with you and the Holy Spirit, one God, for ever and ever. *Amen. (Lesser Feasts and Fasts)*

First Reading

Genesis 1:20-25

And God said, "Let the waters bring forth swarms of living creatures and let birds fly above the earth across the dome of the sky." So God created the great sea monsters and every living creature that moves, of every kind, with which the waters swarm, and every winged bird of every kind. And God saw that it was good. God blessed them, saying, "Be fruitful and multiply and fill the waters in the seas, and let birds multiply on the earth." And there was evening and morning, the fifth day. and God said, "Let the earth

Other Activities for the Day

- Participants might want to look up passages from the Bible that deal with animals. List the animals you can find.
- Read the story of Noah and his ark. Participants could make the animals for the ark and attach them to a drawing of an ark.
- Make origami animals.
- Provide St. Francis pet medals for those being blessed in the service.
- Invite service animals to your blessing and have the handlers talk about the importance of these animals.
- Learn St. Francis' Canticle to the Sun and use it in your family devotions today.

Tips for an uneventful day

- Friendly and well-behaved animals will be welcomed. For those who become nervous, aggressive or who simply cannot make it, they can be represented by photos, etc.
- animals must be under control and suitably restrained.
- animals must have identification in the event of an escape.
- designate a pet toilet area with appropriate clean-up products.
- a small memento of the event for each creature is a nice touch.
- Conduct the blessings in shaded areas if possible.
- You might consider keeping species separate.
- Provide alternative activities for attendees while they wait.
- Pets play a very important role in the lives of our older parishioners and neighbors. Do ask if they need assistance in getting their pet to and from the blessing.
- Take photos, publicize the event in the local media and on your church sign. Pet Blessings are good evangelism tools.
- You might like to make an offering to the SPCA or other animal protection agencies, to your local zoo, or to Project Heifer in honor of all animals today.
- If you serve refreshments, include pet refreshments as well.
- This is a good time to use your St. Francis icon or statue.

St. Francis

Why do we bless pets on this day?

St. Francis of Assisi lived in Italy in the 12th century. Having grown up in a wealthy family, he renounced his wealth and worldly possessions and lived very simply.

When Francis spoke, everyone listened, including the animals. He told the animals that Jesus loved them too. There is a story of a wolf who lived in the town of Gubbio. The wolf came into the town each evening, frightening the inhabitants or eating them. Francis went to speak to "Brother Wolf" and found out that the wolf was hungry. Francis explained that that was not reason enough to eat people and their pets or to terrorize them. The wolf became very gentle, the people fed him and he gave the children in the town rides on his back.

Francis brought us the Christmas creche. In the town of Gubbio, he built a small outdoor stable and put people in the stable to portray Mary, Joseph, the shepherds, the angels. Then he added the animals - cow, donkey, sheep, etc. When asked, Francis said, "Surely the animals praised the new Messiah just as the shepherds and angels did."

And so in honor of this blessed saint of the church we gather today with our animals - our pets, our service animals, police dogs and horses, zoo animals and all God's creatures and give thanks for what they do for us and for what they mean to us.

bring forth living creatures of every kind; cattle and creeping things and wild animals of the earth of every kind." and it was so. God made the wild animals of the earth of every kind, and the cattle of every kind, and everything that creeps upon the ground of every kind. and God saw that it was good."

The Canticle

BCP 89

A Song of Creation Part II

Let the earth glorify the Lord,*
praise him and highly exalt him for ever.
Glorify the Lord, O mountains and hills,
and all that grows upon the earth,*
praise him and highly exalt him for ever.

Glorify the Lord, O springs of water, seas and streams,*
O whales and all that move in the waters.
All birds of the air, glorify the Lord,*
praise him and highly exalt him for ever.

Glorify the Lord, O beasts of the wild,*
and all you flocks and herds.
O men and women everywhere, glorify the Lord,*
praise him and highly exalt him for ever.

The Homily

Hymn

1982 Hymnal # 400

During the singing of the hymn, pets and people line for procession for the blessing.

The Blessing of the Animals

Bless, O Lord, (*name of animal*) and fill the hearts of its owners with thanksgiving for its being. *Amen.*

The Prayers

Let us give thanks to God, our Creator, for all the gifts he has given us.

We thank you God, for the sun and moon, the stars and planets.

We thank you God, for wind and cloud, rain and sun.

We thank you God for water - to drink, to play in, to bathe in and for baptism.

We thank you Lord for fire that gives us light in darkness and warmth.

We thank you Lord for Mother Earth who feeds us and protects us. We thank you for flowers, trees, grass, bushes.

We thank you Lord for our pets you have entrusted to us. They bring us such joy, they calm us, make us laugh, play with us and keep us safe.

We thank you Lord for all animals on the earth, for the fish and birds that give us food, help us with our work, entertain us.

Help us be good stewards of your creation and continually find joy and wonder in all your works.

These things we ask in your Son's Name. Amen.

The Dismissal & Blessing

Go as instruments of God's peace. Where there is hatred, sow love; where there is injury, pardon; where there is discord; union; where there is doubt, faith; where there is despair, hope; where there is darkness, light; where there is sadness, joy.

Let us go forth into the world, rejoicing in the power of the Spirit. Alleluia, Alleluia, Alleluia!

Thanks be to God. Alleluia, Alleluia, Alleluia!

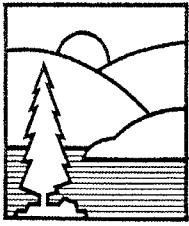
Prayer for a Pet

Blessed are you Lord God of the universe. In your infinite wisdom you created the universe and blessed us with all living creatures. I especially thank you for entrusting me with my pet, my friend who brings me so much happiness and whose presence very often helps me get through trying times.

Please bless my pet and make me a responsible steward of your creature. May we continue to give each other joy and remind us of your power.

As my pet trusts me to take care of it, help me remember to trust you to take care of us, for in so doing we share in your love for all your creatures. And especially, we remember all endangered species and ask your help in taking care of them so that we may continue to appreciate all of your creation. Grant this through Christ our Lord. Amen.

Agenda Item: 10c



Incorporated 1927

TOWN OF LAKE LURE

Office of the Town Manager

TO: Mayor and Commissioners
FROM: Chris Braund
RE: Garrett Humphries Request
DATE: January 4, 2011

At the upcoming council meeting, there will be an agenda item where Mr. Garrett Humphries will request that council intervene in a dispute between neighbors arising from a home construction and erosion problems (refer to his emails and pictures that follow). Under our sedimentation and erosion control regulations, Council may (but not necessarily must) require an individual to restore land affected by the failure to minimize the detrimental effects of sedimentation for land disturbance.

Mr. Humphries asserts that:

- His property was damaged by erosion from the construction of a home by his neighbors (LPME LLC) and has not been sufficiently repaired
- Clint Calhoun should have issued a Notice of Violation (NOV) to LPME and has not done so
- The Town Council should require the neighbor to make additional repairs to Mr. Humphries' property

Mr. Humphries introduced his concerns during a recent Board of Adjustment hearing on a variance request by the neighbors that built their home. They were ultimately granted a variance (with conditions) by the BOA.

Here are the issues for the council in considering whether to schedule and hold a public hearing on this request.

- 1) *Should a Notice of Violation have been issued?* As the sedimentation and erosion control officer, Clint is exerting authority delegated by the state and follows a prescribed process and rules. He has been closely involved with all parties in this case and has worked to gain compliance and to achieve corrective actions. He did not and does not feel that an NOV was warranted because there was prompt response to all problems that he identified. In doing his job, Clint gets criticized for issuing NOV's when not warranted and for not issuing them when warranted. In all cases, it's a judgment call that he's trained to make and the state's recent audit supports his methods. There are events and behaviors that warrant an NOV...and those that don't.

Additionally, Clint describes other factors that contribute to erosion problem on Mr. Humphries' property—that are not the responsibility of LPME. If Clint were to issue NOV's based on more stringent criteria, Mr. Humphries would likely receive one as well. Instead, Clint's approach was to encourage both neighbors to work together on a mutually-acceptable solution.

]

- 2) *Should the Town require LPME to make further repairs or restoration to Mr. Humphries?* This is a difficult, judgment call that Clint is not comfortable in making as the state erosion control laws have few provisions for defining what level of repair or restoration is required or appropriate. This is a civil dispute between neighbors. As a result of the erosion, a retaining wall on Mr. Humphries' property was damaged. This wall has been repaired by the neighbor (LPME). Mr. Humphries is seeking additional repairs and, in Clint's opinion, LPME is making reasonable efforts to address the situation. The Town Council, if desired, may intervene and, after a public hearing on the matter and an examination of the evidence, impose a judgment on one or both of the parties. If the Council wishes to intervene, then a public hearing should be scheduled. The council should visit the site before the hearing. At the

hearing, testimony may be given by either party (Mr. Humphries and LPME) and by Clint. Legal counsel will probably be present.

The Council could also decide not to intervene and to leave it to the neighboring parties to work out a resolution.

Lastly, the Council could direct the Board of Adjustment to hear the matter and render a decision.

Thank you-

Chris

Town Council,

I am writing you to present information at the upcoming town meeting on January 11, 2011 regarding Erosion Control Regulations and damage incurred from construction at 219 Picnic Point Road. I, Garrett Humphries, the homeowner of 227 Picnic Point Road, have received significant damage to my home and property from insufficient measures to retain sediment and water drainage from construction at the adjoining property. I am asking that town council enforce the following regulation to repair and restore all damage incurred by LPME LLC (Contact: Bradley Jones):

96.20 RESTORATION OF AREAS AFFECTED BY FAILURE TO COMPLY

The Town Council may require a person engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

There have been numerous incidences since construction began at 219 Picnic Point Road that have resulted in extreme mudslides, significant water runoff and countless damage to my home. The 2 major incidences occurred on 8/14/10 and 8/24/10 with several less severe incidences prior to those dates. The damage has resulted in continuous mud surrounding my home, staining of trex decking covering my porches and dock areas, muddy water entering under the doors in the lower level of the home, a retaining wall collapse, damage to landscaping and damage to HVAC units on the side of the house. I am asking that town council enforce the regulation by enforcing restoration to all damage incurred. There have been several warnings from Environmental Control Officer Clint Calhoun, but no violations given due to lack of the corrective actions taken by LPME LLC.

I will be forwarding a series of photos for your review.

Sincerely,

Garrett Ryan Humphries

Clint,

I'm writing again in regards to the enforcements not being made by the Town of Lake Lure regarding the sediment problem from my neighboring property. Per the documents you provided, Mr. Jones was to have all the sediment cleaned up on my property by the end of September and all damage/repairs complete. This is still a problem, for it's continually causing staining and sediment left on my dock/porch each time it rains and I have to continually clean it up. My question now is why are you not enforcing this issue or issuing Mr. Jones a violation? How long can people continually violate a warning and not receive a violation from the town? Over three months have passed since you gave them warnings and asked them to have everything complete and they still have not complied. What is it going to take at this point to get this resolved from the town?

I also need to know whom to speak with regarding addressing this issue at the next town meeting.

I've also attached photos of the most recent sediment run-off on the back porch from the recent rain/snow.

Garrett Ryan Humphries







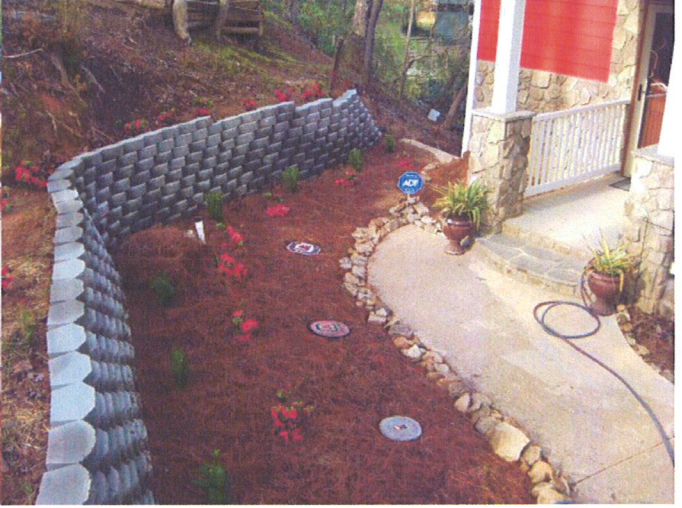
















GENERAL STATUTES OF NORTH CAROLINA
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*** THIS DOCUMENT IS CURRENT THROUGH ALL 2005 LEGISLATION ***
*** ANNOTATIONS CURRENT THROUGH APRIL 28, 2006 ***

CHAPTER 113A. POLLUTION CONTROL AND ENVIRONMENT
ARTICLE 4. SEDIMENTATION POLLUTION CONTROL ACT OF 1973

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

N.C. Gen. Stat. § 113A-66 (2006)

§ 113A-66. Civil relief

(a) Any person injured by a violation of this Article or any ordinance, rule, or order duly adopted by the Secretary or a local government, or by the initiation or continuation of a land-disturbing activity for which an erosion and sedimentation control plan is required other than in accordance with the terms, conditions, and provisions of an approved plan, may bring a civil action against the person alleged to be in violation (including the State and any local government). The action may seek any of the following:

- (1) Injunctive relief.
- (2) An order enforcing the law, rule, ordinance, order, or erosion and sedimentation control plan violated.
- (3) Damages caused by the violation.
- (4) Repealed by Session Laws 2002-165, s. 2.15, effective October 23, 2002.

If the amount of actual damages as found by the court or jury in suits brought under this subsection is five thousand dollars (\$ 5,000) or less, the plaintiff shall be awarded costs of litigation including reasonable attorneys fees and expert witness fees.

(b) Civil actions under this section shall be brought in the superior court of the county in which the alleged violations occurred.

(c) The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation (including reasonable attorney and expert-witness fees) to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require, the filing of a bond or equivalent security, the amount of such bond or security to be determined by the court.

(d) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek injunctive or other relief.

HISTORY: 1973, c. 392, s. 17; 1987 (Reg. Sess., 1988), c. 1000, s. 6; 2002-165, s. 2.15.

NOTES:

EDITOR'S NOTE. --For conditional or temporary exemptions to this section, see the Editor's notes under *G.S. 113A-1*.

CASE NOTES

DEFENDANT HELD ENTITLED TO JURY TRIAL. --Where the Attorney General, on behalf of the Department, filed an action for the collection of civil penalties under *G.S. 113A-64(a)(2)* and for the imposition of an order enforcing compliance with this Article and an injunction under this section, the action was a civil action, not one for review of a

final agency decision, and defendant, who requested a jury trial in his answer, was therefore entitled to jury trial on all factual issues. *State ex rel. Lee v. Williams*, 55 N.C. App. 80, 284 S.E.2d 572 (1981).

DOWNSTREAM LANDOWNER COULD RECOVER FOR DAMAGES caused by sediment runoff from an upstream landowner's property into a stream and a lake where there was substantial evidence that the upstream landowner's development was found to be out of compliance with the North Carolina Sedimentation Pollution Control Act of 1973, G.S. 113A-50 et seq. *Whiteside Estates, Inc. v. Highlands Cove, L.L.C.*, 146 N.C. App. 449, 553 S.E.2d 431 (2001).

PUNITIVE DAMAGES NOT RECOVERABLE. --The Act only provides for the recovery of "damages caused by the violation," and because punitive damages are designed to punish a party and are not awarded as compensation, they are not recoverable under the Act. *Huberth v. Holly*, 120 N.C. App. 348, 462 S.E.2d 239 (1995).

ATTORNEY FEES. --Where a landowner sued a neighboring landowner for nuisance, trespass, and violation of the North Carolina Sedimentation Pollution Control Act of 1973, G.S. 113A-50 et seq., based on damages caused by the neighboring landowner's construction activity, no apportionment of attorney fees was required. *Whiteside Estates, Inc. v. Highlands Cove, L.L.C.*, 146 N.C. App. 449, 553 S.E.2d 431 (2001).

EXPERT WITNESS FEES. --Trial court erred in awarding expert witness fees under G.S. 113A-66(c), where there was no showing that the expert witnesses appeared under subpoena as required by G.S. 7A-314. *Whiteside Estates, Inc. v. Highlands Cove, L.L.C.*, 146 N.C. App. 449, 553 S.E.2d 431 (2001).

CITED in *State ex rel. Grimsley v. Buchanan*, 64 N.C. App. 367, 307 S.E.2d 385 (1983).