

LAKE LURE TOWN COUNCIL REGULAR MEETING PACKET

Tuesday, October 11, 2011



Mayor Bob Keith

Commissioner Wayne Hyatt

Commissioner Mary Ann Silvey

Commissioner John Moore

Commissioner Linda Turner

Agenda Item: 7b



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 *SJK*
Date: September 30, 2011
Subject: Budget Amendment-Olympiad Donation to Fire Dept.

The Town of Lake Lure Fire Department has received a \$3,000 donation from HNG Olympiad. The Fire Department would like to spend this amount during this fiscal year and we would like to create a line item "Purchases from Donations" within the Fire Department's budget and a corresponding revenue item "HNG Olympiad Donation."

If this is acceptable, a **motion to add \$3,000 to revenue line item HNG Olympiad (#10-383902) and increase \$3,000 to Fire Dept. budget (#10-43400.209) Purchases from Donations** would be proper.

If you have any questions, please feel free to contact me at your convenience.

CC: Chris Braund, Town Manager
Ron Morgan, Fire Chief
Julie Scherer, Accountant

Agenda Item: 7c



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 *SAK*
Subject: Budget Adjustment-Boat Sale Surplus
Date: September 30, 2011

Recently, the town accepted the highest bid (\$875.00) from an abandoned boat that had been donated. Dean Givens, Lake Operations Director, would like to use the proceeds from the sale to be used for repairs and maintenance within the Lake Operations Dept. This is not actual owned capital that was sold, but a donation that was declared surplus to the needs of the town.

If council agrees, a motion to **move \$875.00 from the sale of fixed assets (#10-383500) to Lake Dept. (#10-618000.353)** is needed.

If you have any questions, please free to contact me.

Xc: Chris Braund, Town Manager
Dean Givens, Lake Operations Director
Julie Scherer, Accountant

Agenda Item: 9a

Washburn Marina Renovation Summary of Contractor Bids

Project Specification	Change History	CS&DB Terry Baker (mfr: FSI Docks)	WNC Docks Jonathan Hinkle (mfr: Wahoo Docks)	Rowboat Dock & Dredge Bob Wilson (mfr: Shoremaster)
1. Docks must come pre-engineered to meet or exceed NC Commercial building standards from the dock manufacturer.		Plans submitted by FSI Inc. were evaluated by Kim Warner, project engineer. He found that Proposed docks would meet the town's specifications and the NC building standards.	Plans submitted by Wahoo Docks were evaluated by Kim Warner, project engineer. He found that Proposed docks would meet the town's specifications and the NC building standards.	No plans were submitted for evaluation.
2. Materials to be of Aluminum components		Yes	Yes	Yes
3. Flotation devices shall be Cellofoam Permafloat encapsulated foam or equal, supporting loads of 100 psf (lbs per square foot.)	<p>Revised to 40 psf.</p> <p>After further study and consideration of complications from meeting the 100 psf requirement, Dean and Kim elected to lower this requirement to a more conventional 40 psf.</p> <p>This was verbally communicated to all bidding contractors.</p> <p>All Contractors acknowledged this verbal change in specifications.</p>	Proposed dock has a flotation rating of 40 psf. (as written on plans?)	Contractor has verbally indicated that proposed dock has a flotation rating of 75 psf.	Rowboat did not supply any dock plans with their bid, but the proposal indicates that all Town requirements will be met by their product.

10/7/2011

Washburn Marina Renovation Summary of Contractor Bids

Project Specification	Change History	CS&DB Terry Baker (mfr: FSI Docks)	WNC Docks Jonathan Hinkle (mfr: Wahoo Docks)	Rowboat Dock & Dredge Bob Wilson (mfr: Shoremaster)
4. Dock components to be secured using 3/16 stainless steel fasteners		Proposal indicated that installed docks would meet this requirement	Proposal indicated that installed docks would meet this requirement	Proposal indicated that installed docks would meet this requirement
5. Complete dock structure shall be capable of withstanding sustained winds of up to 110 MPH with boats secured to all slip positions.		Proposal indicated that installed docks would meet this requirement	Proposal indicated that installed docks would meet this requirement	Proposal indicated that installed docks would meet this requirement
6. Dock shall be capable of adjusting to lake levels between 994' and 984' (4' above and 6' below normal level) without intervention.		Proposal indicated that installed docks would meet this requirement	Proposal indicated that installed docks would meet this requirement	Proposal indicated that installed docks would meet this requirement
7. Contractor must have a valid NC general contractor's license		Yes License # 67328	Yes License # 54498	Yes License # 9859

10/7/2011

Washburn Marina Renovation Summary of Contractor Bids

Other Bidder/Solution Qualifications (not to be used as a basis of award)	CS&DB Terry Baker (mfr: FSI Docks)	WNC Docks Jonathan Hinkle (mfr: Wahoo Docks)	Rowboat Dock & Dredge Bob Wilson (mfr: Shoremaster)
Who will be on site?	CS&DB crews (plus FSI installers will be on site from the manufacturer)	WNC Dock crews (plus Wahoo installers are available on call if needed)	RD&D crews
Warranty	10 year limited	5 year limited	Not submitted
Contractor/Dock Company qualification	Unlimited general contractor license	Limited general contractor license	General contractor license (limit not listed)
Education	A.A.S. in Civil Engineering	Associates Arts Degree	
Experience	CS&DB Construction has been in business since 2005. Terry Baker has been licensed and in business as a contractor since 1983.	Marathon Builders has been in business since 2000 Started WNC docks company in 2009.	30 years
Other Qualifications	FSI Dealer/Installer NC & TN contractor licenses Licensed Professional Land Surveyor	Wahoo Dealer/Installer	
Dock Manufacturer	Flotation Specialties, Inc. (FSI) has been in business since 1989 and has supplied many commercial marinas and residential docks.	Wahoo Docks has been in business for 20 years and has supplied many commercial marinas and residential docks.	Shoremaster has been in business for 20 years and has supplied many commercial marinas and residential docks.

Washburn Marina Renovation Summary of Contractor Bids

Other Bidder/Solution Qualifications (not to be used as a basis of award)	CS&DB Terry Baker (mfr: FSI Docks)	WNC Docks Jonathan Hinkle (mfr: Wahoo Docks)	Rowboat Dock & Dredge Bob Wilson (mfr: Shoremaster)
Jobs completed for the Town of Lake Lure	<p>Served as contractor over:</p> <ul style="list-style-type: none"> • Wooden docks beside the water slide. • Wooden docks at the town boathouse behind the ABC store. • Re-construction of spoils pit in Morse Park. <p>Surveying projects:</p> <ul style="list-style-type: none"> • Spoils pit Morse Park • Spoils pit Boys Camp Rd. 	<ul style="list-style-type: none"> • Remodel of the new Lake Operations Office • Built stairs from top of Dam to bottom. • Demolition a house on Sydney Lanier Rd. 	<ul style="list-style-type: none"> • Marina at Rumbling Bald (galvanized steel) • Marina at Lake Lure Village Resort (galvanized steel) • Floating docks for Grey Rock (galvanized steel)

Agenda Item: 9b

From: Lake Lure Town Manager
Sent: Friday, October 07, 2011 12:38 PM
To:
Cc:
Subject: ABC Lease Agreement

Attachments: ABC Lease Agreement 2011.doc

The current lease between the town and the ABC is expiring (it was a 5-year term from 2006). The mayor and council have indicated that it would be better to have a 1-year term that is automatically renewed annually unless the either party provides notice.

We've updated the lease (attached) with changes marked in yellow.

If satisfactory, the town council will consider approving this lease in their meeting on Tuesday October 11th.

Thanks-



Chris Braund
Town Manager

North Carolina
Rutherford County

LEASE AND AGREEMENT

THIS LEASE AGREEMENT, made and entered into as of 11th day of October, 2011, by and between TOWN OF LAKE LURE, a municipal corporation located in Rutherford County, North Carolina, party of the first part, "Landlord", (hereinafter also referred to as the "Town"); and the TOWN OF LAKE LURE BOARD OF ALCOHOLIC BEVERAGE CONTROL, party of the second part, "tenant" (hereinafter also referred to as "ABC Board").

WITNESSETH:

That for and in consideration of their mutual covenants, the Town hereby leases and demises to the ABC Board, and the ABC Board hereby hires and rents from the Town, a building, adjacent parking, which is currently located on the following tract or parcel of land:

Situate, lying and being in the Town of Lake Lure, Chimney Rock Township, Rutherford County, North Carolina, and being more particularly described as follows:

BEGINNING at a point located South 75 deg. 24 min. 31 sec. West 165.28 feet from an iron bar beside an axle, said iron bar being located in the Southernmost corner of lots 69 and 70, Block 3, Luremont Section of Chimney Rock Mountains Inc., said beginning point also being located in the Westernmost right of way of Jack London Road, and running thence from said beginning point thus established South 73 deg. 05 min. 15 sec. West 120 ft to an iron pin; thence running South 16 deg. 54 min. 45 sec. East 81.30 feet to an iron pin in the Northern margin of the right of way for U.S. Highway 74; thence running with said margin of said right of way curving to the right on a radius of 319.48 feet an arc distance of 110.39 feet (Cord North 71 deg. 07 min. 54 sec. East 109.85 feet); thence leaving said right of way of U.S. Highway 74 and running with the right of way of Jack London Road on a curve to the left on a radius of 15.64 feet an arc distance of 29.42 feet (Cord North 27 deg. 08 min. 56 sec. East 25.27 feet); thence continuing with the right of way of Jack London Road North 26 deg. 44 min. West 21.97 feet to a stake; thence continuing with said right of way on a curve to the right on a radius of 249.19 feet an arc distance of 37.95 feet (Cord North 22 deg. 22 min. 13 sec. West 37.92 feet) to the place and point of BEGINNING. Containing .216 acres, more or less. Said property being that shown on a survey by Roger M. Lyda, R.L.S. entitled "Property of Town of Lake Lure" dated January 9, 1980.

This property is conveyed subject to easements, restrictions and rights of way of record.

Being the same and identical property which was conveyed by the Town of Lake Lure Board of Alcoholic Beverage Control to the Town of Lake Lure, a municipal corporation of Rutherford County, by deed dated March 1, 1986, and of record in Deed Book 482, at page 756, Rutherford County Registry.

This Lease is made upon the following terms, conditions and covenants:

SECTION ONE

TERM OF LEASE

This Lease is for a term commencing on October 11, 2011 lasting twelve (12) months and shall be automatically renewed annually unless either party gives written notice sixty (60) days prior to the end of the lease period.

SECTION TWO

RENT

Tenant shall pay to Landlord an annual rent of \$6,030.00 Dollars during the term of the lease, payable in equal monthly installments of \$502.50 Dollars in advance on or before the first day of each month during the term hereof.

SECTION THREE

TAXES AND LIENS

In the event the Town is exempt from any taxes or assessment, but the ABC Board is not, then the ABC Board covenants and agrees to pay promptly all taxes and assessments of every kind or nature which are now or may hereafter be imposed or assessed upon the premises, except as otherwise expressly provided in this Lease Agreement, and tenant agrees that it will promptly pay all such taxes or assessments as the same become due.

SECTION FOUR

UTILITIES

(a) Tenant shall pay all monthly charges for heat, air conditioning, gas, and electricity attributable to the premises for each month.

(b) Landlord shall, from time to time, upon request from tenant, join in the granting of such utility easements as may be reasonably necessary to service tenant's requirements on the premises.

SECTION FIVE

REPAIRS AND MAINTANANCE

(a) The Tenant shall be responsible for the maintenance of the interior of the leased premises and shall keep said interior in as good condition and repair as when received, ordinary wear and tear and

damages caused by the hazards included within standard fire and extended coverage insurance, or by flood, or extraordinary action of the elements excepted.

(b) Landlord shall be responsible for all exterior repairs, including, but not limited to, repairs of a structural nature, foundation repairs and repairs to the roof, as well as repairs as required because of water entering the premises from the roof or other parts of the building or from other causes not under the control of Tenant.

(c) The Tenant shall replace, at its own expense, all plate glass and other glass in the leased premises, both interior and exterior, which may become damaged or broken.

(d) Landlord and Tenant shall each make all necessary repairs and replacements of the portions of the premises which they are respectively required to maintain and repair as aforesaid, and all repairs and replacements shall be diligently commenced and completed.

SECTION SIX

INSURANCE

(a) Tenant shall carry throughout the term, at its own expense, as Owners, Landlords, and Tenants General Public Liability Policy covering both the Landlord and the Tenant with minimum limits of \$500,000.00 for injury to or death of any one person, and \$500,000.00 for injury to or death of any number of persons in one occurrence, and property damage liability insurance in the amount of \$500,000.00. Certificate evidencing such insurance shall be furnished to the Landlord, and Tenant will deliver to the Landlord certificates of renewal of such policy not less than ten (10) days in advance of the expiration thereof; such policy shall not be cancelable without at least ten (10) days prior written notice to the Landlord.

(b) Tenant shall maintain and keep in force all employers' compensation insurance required under the laws of the State of North Carolina, and such other insurance as may be necessary to protect Landlord against any other liability to person or property arising hereunder by operation of law, whether such law be now in force or adopted subsequent to the execution hereof.

(c) Should tenant fail to keep in effect and pay for such insurance as it is in this section required to do, Landlord may do so, in which event the insurance premiums paid by Landlord shall become

due and payable forthwith and failure of Tenant to pay same on demand shall constitute a breach of this Lease.

SECTION SEVEN

FIXTURES

All fixtures installed by tenant in the demised premises shall be and remain the property of Tenant and may be removed by it at any time during the term of this Lease or at the expiration thereof. Any such fixtures remaining in the premises after the expiration of the term of the Lease shall be deemed abandoned by Tenant and shall become the property of Landlord. Any damage to the demised premises caused by the removal of such fixtures shall be repaired by Tenant.

SECTION EIGHT

ASSIGNMENT

Tenant shall not assign or in any manner transfer this Lease or any estate, interest or benefit therein or sublet the leased premises or any part thereof or permit the use of the same or any part thereof by anyone other than Tenant without the prior written consent of the Landlord.

SECTION NINE

DAMAGE TO PREMISES

(a) If the improvements on the leased premises shall be damaged or destroyed by fire or by any other hazard insurable by fire insurance with what is commonly referred to as extended coverage, Landlord shall proceed with due diligence to repair or restore said improvements to substantially the same condition which existed before such damage or destruction.

(b) In the event that any damage from the causes aforesaid shall render the leased premises totally or partially untenable for the Tenant's purposes, rent under this Lease shall be abated in proportion to the Lessee's loss of effective use of the premises until such time as full effective use shall be restored. Lessee shall be entitled to receive a pro rata refund out of any advance rent paid by it for the period during which the premises were unusable by reason of destruction or damage.

(c) If the destruction or damage amounts to more than seventy-five percent (75%) of the insurable value of the premises, then either party may terminate this Lease by written notice to the other party within thirty (30) days after the date of such occurrence. Provided, however, that this Lease shall not

thereby terminate if the damage shall have resulted from a hazard included in standard fire and extended coverage insurance and if Tenant shall, within said thirty (30) day period, or within ten (10) days after notice of termination by Landlord, send Landlord written notice of its election to continue this Lease commencing four (4) weeks after the date that restoration by Landlord shall be completed and available to Tenant for the conduct of its business; and in such event this Lease shall continue in effect, except that until the restoration by Landlord shall be completed, the rent shall abate in the manner provided in paragraph (b) of this Section Nine. In the event of any termination under this paragraph (c), this Lease shall terminate as of the date of the occurrence, and the rent and all other payments owing or already paid by Tenant shall be adjusted as of said date.

SECTION TEN

EMINENT DOMAIN

(a) If the whole of the leases premises shall, at any time while this Lease is in effect, be taken under the power of eminent domain, this Lease shall terminate and neither party shall have any further responsibility or obligation to the other hereunder as of the date of such thing. The award for such taking of the demised premises shall belong to Landlord; provided, however, Tenant shall be permitted to make claim to the condemning authorities for the loss of its leasehold estate, leasehold improvements, fixtures, equipment, loss of business and moving expenses.

(b) If such taking shall be of only a portion of the leased premises and the consequent reduction in the area of said premises by such as to render the remainder unsuitable, in the reasonable opinion of Tenant, for the purposes for which they are rented, then this Lease shall terminate from the time when possession thereof shall be required by the condemning authority, and the payment of future rent hereunder shall cease at such time. Should, however, only a portion of the demised premises be so condemned and the consequent reduction of the area of said premises be not such as to render the remainder unsuitable for the purposes for which they are leased, this Lease shall continue in full force and effect as to the remaining portion of the demised premises and there shall be an equitable abatement of rent during the remaining term shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damages caused by such taking on condemnation from the condemning authority.

Landlord and Tenant shall request separate awards and neither shall have any rights in any award made to the other.

SECTION ELEVEN

INDEMNIFICATION OF LANDLORD

Tenant during the term hereof shall indemnify Landlord against all claims and demands, whether for injuries to persons, loss of life, or damage to property occurring within the demised premises and arising out of the use and occupancy of the demised premises by Tenant, excepting, however, such claims and demands caused by acts or omissions of Landlord. Nothing contained in this section shall, however, detract from Tenant's rights to protection under the liability insurance policy to be paid for by the Tenant as specified in Section Six hereof.

SECTION TWELVE

DEFAULT

(a) If at any time during the term or extensions of this Lease there shall be a default within the provisions of this Agreement, and if Tenant fails to cure such default following thirty (30) days written notice from Landlord, then Landlord may remedy or attempt to remedy any such default or other noncompliance and expend any sums necessary therefore at the cost and expense of Tenant, and the sums so expended shall be payable to Landlord on demand with lawful interest thereon and may be added by Landlord to any rents or other sums due or to become due hereunder. On termination, Landlord may recover from Tenant all damages proximately resulting from the breach, including the worth of the balance of the Lease over the reasonable rental value of the premises for the remainder of the Lease term, which such shall be immediately due Landlord from Tenant.

(b) After re-entry as set out in Paragraph (a) hereinabove, Landlord may relet the premises or any part thereof without terminating the Lease, at the rent and on the terms as Landlord may choose. Landlord may make alterations and repairs to the premises. The duties and liabilities of the parties if the premises are relet as provided herein shall be as follows:

(1) In addition to Tenant's liability to Landlord for breach of the Lease, Tenant shall be liable for all expenses of the reletting, and for the difference between the rent received by Landlord under the new Lease Agreement and the rent installments that are due for the same period under this Lease.

(2) Landlord shall have the right to apply the rent received from reletting the premises (a) to reduce Tenant's indebtedness to Landlord under the Lease, not including indebtedness for rent, (b) to

expenses involved in the reletting, (c) to rent due under this Lease, or (d) to payment of future rent under this Lease as it becomes due.

SECTION THIRTEEN

CAPTIONS

The captions of each Section of this Lease are for convenience only and are not a part of this Lease, and do not in any way limit or amplify the terms and provisions of this Lease.

SECTION FOURTEEN

SHORT FORM LEASE

The parties hereto agree that upon the demand of either party they will execute and deliver a short form lease for the purpose of recording. Such short form of Lease shall include a description of the leases premises, the term of the Lease, and such other provisions as the parties may agree upon and referring to this Lease as containing the entire agreement between the parties.

SECTION FIFTEEN

REMEDIES CUMULATIVE NON-WAIVER

(a) The failure by Landlord to insist upon the strict performance of any agreement, term or condition of this Lease or to exercise any right or remedy consequent upon an unremedied breach thereof, and the acceptance of full or partial rent during the continuance of any unremedied breach, shall not constitute a waiver of any such unremedied breach or the performance of such agreement, term or condition. No agreement, term or condition of this Lease to be performed or complied with by Tenant, and no unremedied breach thereof shall be deemed waived, altered or modified except by a written instrument executed by Landlord. The waiver of any breach shall not affect or alter this Lease, but each and every agreement, term or condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

(b) Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease as now or hereafter existing at law or in equity, by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or

all other rights or remedies for any then existing breach which has not then been remedied or in the course of being remedied provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

SECTION SIXTEEN

ENTIRE AGREEMENT

This Lease sets forth all the promises, agreements, conditions, and undertakings between Landlord and Tenant relative to the leased premises, and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, expressed or implied, between them varying the terms of this Lease. This Lease shall not be modified, altered, amended or changed, nor shall it be terminated except as expressly provided herein except by an instrument in writing executed by the parties.

SECTION SEVENTEEN

OBLIGATIONS ON SUCCESSORS

Landlord and Tenant agree that all the provisions hereof are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate paragraph hereof, and that all of the provisions hereof shall bind and inure to the benefit of the parties hereto, and their respective heirs, legal representatives, successors and assigns.

SECTION EIGHTEEN

EXPIRATION OF LEASE

Tenant shall deliver to Landlord physical possession of the leased premises upon the termination of this Lease in as good condition as the premises are at the commencement of the term of this Lease, except for ordinary wear and tear and damage by fire or other casualty over which Tenant had no control.

IN WITNESS WHEREOF, said parties have hereunto set their hands and seals to this Agreement and Lease, in duplicate, the day and year first above written.

TOWN OF LAKE LURE, a Municipal Corporation

By: _____ (SEAL)

S. Christopher Braund, Town Manager

ATTEST:

Andrea H. Calvert, Town Clerk

TOWN OF LAKE LURE BOARD OF
ALCOHOLIC BEVERAGE CONTROL

TOWN OF LAKE LURE BOARD OF
ALCOHOLIC BEVERAGE CONTROL

By: _____ (SEAL)

Stuart W. Richardson, Chairman

By: _____ (SEAL)

Alan Griswold, Board Member

By: _____ (SEAL)

William Keller, Board Member

NORTH CAROLINA
RUTHERFORD COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that S. Christopher Braund, who, being by me duly sworn says that he is the Town Manager of the Town of Lake Lure, a Municipal Corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of the corporation and that the said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And that the said S. Christopher Braund acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and notarial seal, this the _____ day of _____, 20____.

Notary Public

My Commission Expires:

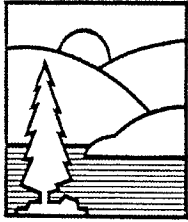
STATE OF NORTH CAROLINA
RUTHERFORD COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that Stuart W. Richardson, Alan Griswold, and William Keller, who are all duly appointed members of the Town of Lake Lure Board of Alcoholic Beverage Control, personally appeared before me this day and acknowledge the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____, 2011.

Notary Public

My Commission Expires:

Agenda Item: 9c



Incorporated 1927

TOWN OF LAKE LURE
Office of the Town Manager

TO: Mayor and Council
FROM: Chris Braund
DATE: September 22, 2011

RE: Request from Residents of Mistletoe Park Lane

Below is a request of the Town for assistance in removing a large tree from private property along the south side of Mistletoe Park Lane, a privately owned and maintained road off of Washburn Road. There is also a second, related request from the Neumann's for the town to assume maintenance responsibility for Mistletoe Park Lane.

From:
Sent: Monday, September 12, 2011 9:13 AM
To: 'Lake Lure Town Manager'
Cc: Carla Neumann; Tom Neumann
Subject: Mistletoe Park

Hi Chris,

I'm sure you know about the trees that fell over Mistletoe Park last week. The Wilsons tell me they have had Mistletoe cleared, but there is a HUGE pile of logs on the side of Mistletoe that look to me to be very dangerous. I don't know if you've seen it, but it's very scary, and the logs look like they are going to roll down onto Mistletoe at any minute. I understand from Jo Wilson that the person who owns the land where the tree was is the same person who owns the red house that was recently torn down and that he will not accept responsibility for removing the logs. If that is the case, will the Town have the logs cut up and removed so that Mistletoe Park can be used without fear of being crushed by those logs?

Any suggestions or help you could give would be greatly appreciated. Thanks very much.

Best regards,

Sharon Ryan, Owner/Broker
Distinctive Mountain Lodging

From: lodgingd@bellsouth.net [mailto:lodgingd@bellsouth.net]
Sent: Monday, September 12, 2011 12:49 PM
To: 'Lake Lure Town Manager'
Cc: Carla Neumann; Tom Neumann
Subject: RE: Mistletoe Park

Yes, please do forward our request to the Mayor and Council. As I'm sure you know, this road was at one time maintained by the Town. We have never known why the Town decided to discontinue maintaining it. However, we've been dealing with the situation and the Neumanns and Tingens have spent a considerable amount of money maintaining the road over the last few years.

Thanks for your assistance.

Best regards,

Sharon Ryan, Owner/Broker



Town policy (enacted in 2009) restricts the use of Town resources to maintain private roads without authorization from Town Council.

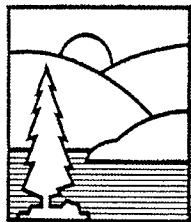
Points to consider:

- 1) The Wilson's, their son and Charles Hicks cut and removed the tree from the road allowing for vehicle passage, but it is very tight and the remaining logs are precarious and should be removed.
- 2) The logs are on the property of Timothy and Joyce Penland, who are not likely to participate in their removal as they are unresponsive to communications regarding this property. The Town recently condemned and demolished a dilapidated structure on their property at a cost to the town of over \$8,000. Liens have been recorded.
- 3) When the Wilson's recently asked for the Town's assistance in improving a road culvert, we advised that this would be the responsibility of the joint property owners along Mistletoe Park Lane.
- 4) For at least the last 23 years, Mistletoe Park Lane (a/k/a Agassiz Place) has not appeared on the official map and list of town-maintained roads. These maps are required by the state in order to receive funding per road mile claimed and maintained by the town.

- 5) There's no disputing that, sometime in our 80-year history, the Town has performed maintenance or improvement work on some private roads...including Mistletoe Park Lane. Prior mayors, commissioners or town managers occasionally saw to it that work was done, presumably because it served a public interest. That work, however, does not equate to the town having or claiming responsibility for these streets. At most, these were taxpayer-funded gifts to the joint owners of private roads.
- 6) Throughout town, the removal of downed trees is the responsibility of private property owners. The town will remove trees when necessary on public property and along the right-of-way of publicly-maintained roads.

Cc: Chris Callahan, Town Attorney
Shannon Baldwin, Director of Community Development
Tony Hennessee, Director of Public Works

Agenda Item: 9d



Incorporated 1927

TOWN OF LAKE LURE

Office of the Town Manager

TO: Mayor and Council
FROM: Chris Braund
DATE: September 22, 2011

RE: Request to Dedicate Mistletoe Park Lane

Tom and Carla Neumann, representing the residents along Mistletoe Park Lane, have requested that the Town Council assume (or resume) maintenance responsibility for the street.

Points for the council's consideration:

1. Mistletoe Park Lane is approximately 1,070 feet long. It ranges from 10 to 12 feet wide and has a gravel surface on nearly its entire length. It runs from Washburn Road eastward to a cul-de-sac...between Sidney Lanier and Luther Burbank roads.
2. On the original Luremont Plat, this lane was labeled Agassiz Place and what is now Washburn road was labeled Louis Agassiz Drive. At some point, Agassiz Place was renamed Mistletoe Park Lane. The town has provided a street sign as is common on other privately-maintained roads.
3. The town provides an annual accounting of all town-maintained roads for the purposes of Powell Bill disbursements of gasoline taxes to be used for road maintenance. Our records go back to 1988, so we know that the town has not maintained nor claimed responsibility for maintaining Mistletoe Park Lane in the last 23 years.
4. Mistletoe Park Lane does not meet current town standards for road width, surface composition, etc. Town policy governs that streets built prior to April 9, 2002 that do not meet the minimum street standards may still be accepted by the Town Council if the street is at least 16 feet wide and the acceptance is in the best interest of the Town. However, the Council may ask for additional improvements to better meet the street standards outlined in 91.56 of the Subdivision Regulations.
5. If the town were to accept maintenance of Mistletoe Park Lane, it would add approximately 1,000 feet of road to our Powell Bill maps. Under current Powell Bill reimbursement (about \$3500 per mile), we would receive an additional \$710 per year from the state.
6. There are approximately 70 miles of privately-maintained roads in Lake Lure and 20 miles of town-maintained roads. Very few of the privately-maintained roads meet current town standards. The precedent to assume maintenance of substandard roads could lead to other requests to dedicate private roads and additional maintenance costs for the town.
7. There are approximately 70 miles of privately-maintained roads in Lake Lure and 27 miles of town-maintained roads. Very few of the privately-maintained roads meet current town standards. The precedent to assume maintenance of substandard roads could lead to significant future maintenance costs for the town.

From Carla Neumann: *I believe the reason that Mistletoe Park is not showing on the official town-maintained road maps, is because it was renamed at some point in history. I have been informed that the name of the road prior to it being called Mistletoe, was Louis Agassiz Place, which I believe you will find on the maps. I was told this by John Leps, who also lives on Mistletoe Park. He told me his parents bought the property in 1968 and specifically asked about who maintained that road at the time. They were told that the town absolutely did maintain the road. He attested to this, as did prior Mayor Charles Hicks, the Wilsons and several others... that Mistletoe Park was fully maintained, until some point when it was arbitrarily discontinued. John also mentioned that he/his family had received some correspondence along the way soliciting them in the renaming of the road. He said one day they received word that the road would then be called Mistletoe Park. So, I believe this would explain why Mistletoe Park is not showing on town maps.*

From Town Attorney Chris Callahan: *There were numerous instances I understand of the town sending crew over the scrape roads during blizzards that were "private" roads, and a couple of times in the past some of those homeowners tried to argue that constituted "prior maintenance" of the road. But the better issue would be: has the town paved it? Has the town filled potholes?*

Even if it were shown that the town did in fact maintain the road for a number of years, if it's also true that the town hasn't for ten years, then it still may just be the question: does the town NOW want to adopt this as an official city street and maintain it? Do all the property owners desire this and are they willing to sign right of ways or easements to the town? Does this comply with the policy the town has had in place for about 20 years on criteria for taking over a private street? Width, surface composition materials, etc?

Of course the town CAN elect to start maintaining this: it's just that it can open up the can of worms for a lot of people who might want their private roads maintained-- unless very compelling reasons and facts exist to do so.

From Community Development Director Shannon Baldwin: *Per our research, nothing found in our records indicates the Town of Lake Lure received Powell Bill funds from NCDOT to maintain "Mistletoe Park Lane", or "Agassiz Place" from 1988 to 2011 (23 years). Nothing in old deeds or plats reviewed by the department indicates "Mistletoe Park Lane", or "Agassiz Place" was ever a town owned or maintained street.*

From Zoning Administrator Sheila Spicer: *I have researched the deeds to every property bordering Mistletoe Park, which was originally called Agassiz Place. Agassiz Place is referenced by name on four of these deeds, while all of them reference either plat book 2 page 5, plat book 2 page 6 or both for a complete description of the property. Agassiz Place is identified on these plats. None of the deeds reference any rights or obligations the property owners have concerning the road. The recorded plats state neither publication nor recordation of the plat vests in the public or grantees rights, easements, or privileges to roads and streets. The name Mistletoe Park is not referenced on any of the deeds or plats.*

From Former Mayor Charles Hicks:

August 23, 2007

Charles F. Hicks
P.O. Box 115
Lake Lure, NC 28746

Thomas and Carla Neumann
711 Foresteria Avenue
Wellington, FL 33414

RE: Road Maintenance for Mistletoe Park

Dear Mr. and Mrs. Neumann:

I, Charles F. Hicks, previously served as Town Building Inspector and also served as Town Mayor for three terms. I have lived in Lake Lure for 35 years. I will certify and assure Mistletoe Park has been maintained by town work crews. Mistletoe Park was named by the town; the street sign was installed by the town; and the culvert pipe was installed by the town. Further, town work crews use Mistletoe Park to access town water pipes. The town stopped maintenance on this road back in 1988. At one time, the town agreed to install a new culvert pipe behind the home of Robert and Joe Wilson. The town workers delivered the culvert pipe to the site on Mistletoe Park and let it sit there for 14 months. The pipe was never installed and for unknown reasons the pipe was removed.

Mistletoe Park does not conform to state specifications for Powel Bill Funding. However, many streets in the town do not conform to Powel Bill Funding requirements. Although Powel Bill Funding is used to maintain roads in the town of Lake Lure, property tax dollars should also be used to maintain the roads as well.

I do not understand why town crews are not being used to maintain Mistletoe Park.

Sincerely,

Charles F. Hicks

Witnessed by:
Notary

Jaqueline M. Foote
Jaqueline M. Foote
Notary Public
Commission expires 2-26-12

What do I need to submit with my application?

- A Site Plan
- Street Profiles and Cross Section (Certified by a licensed engineer or surveyor)
- Petition from property owners along the subject street. The form, provided by the town, should include a list of all property owners along the street to be dedicated, their mailing address, tax pin, and signatures
- Engineer Certification Form (provided by the town) certifying that the street complies with Section 91.56 of the Subdivision Regulations.
- Current maintenance agreement and a written explanation of how the street is currently maintained
- Application Fee of \$300.00

More Questions?

Contact the Subdivision

Administrator at

(828) 625-9983,

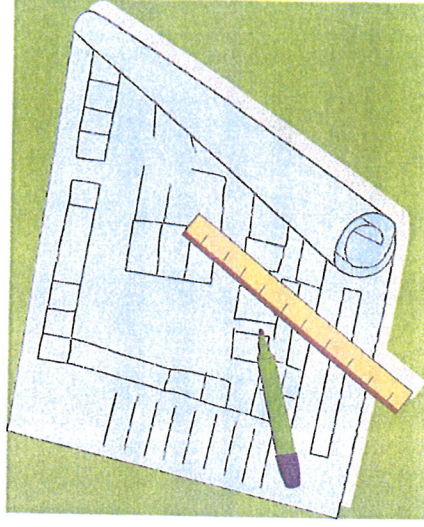
psa@townoflakelure.com

or review Section 91.56 of the

Subdivision Regulations online at

www.TownofLakeLure.com

Dedicating Streets for Town Ownership & Maintenance



Town of Lake Lure, NC
February 9, 2010

Issued by the Lake Lure Community
Development Department

This pamphlet is designed to provide general information only.

Any decisions and processes will be based upon the regulations of the Town of Lake Lure.

How do we get the town to maintain our street?

If you are interesting in having your private street accepted by the town for maintenance, you should contact the Community Development Department for a consultation meeting. During the consultation, staff will ask several essential questions about your street to determine if it is a candidate for acceptance by the Town.

What are criteria does the Town use to determine if a street can be accepted for town maintenance?

- If the street was built after 2002, it must meet all of the street standards outlined in Section 91.56 of the Subdivision Regulations.
- If the street was built prior to April 9, 2002 and does not meet the minimum street standards, then Town Council may still accept the street provided that the street is at least 16 feet wide and street acceptance is in the best interest of the Town. However, the Town Council may ask for additional improvements to better meet the

street standards outlined in 91.56 of the Subdivision Regulations.

- The Town Council must find that accepting the street is in the best interest of the Town.
- The Town Council will not accept a street unless it is at least sixteen feet wide.

What is the process?

- If the street meets the minimum criteria for acceptance, then an application and the associated application materials can be submitted.
- The town staff will review your application and materials, conduct an inspection and generate a street assessment report (SAR).
- The SAR will be sent to Town Council for review at a public meeting.
- The Town Council will have to determine if the streets meets the criteria for acceptance.
- Town Council may require street improvements so that the street meets certain minimum standards.
- Once the application is approved and street improvements are made, the Town Council will pass a resolution accepting the street as a town-maintained street.

What are the minimum standards for streets?

- Some of the street standards are based on the type of street and are fully outlined in Section 91.56 of the Town of Lake Lure Subdivision Regulations.
- Lanes must have at least 16 feet of travel way width, 30 feet of right-of-way width and can be graveled.
- Minor streets must have at least 18 feet of travel way width, 40 feet of right-of-way width and shall be paved.
- Collector streets must have 20 feet of travel way width, 50 feet of right-of-way width and must be paved.
- Arterial Streets must have 60 feet of right-of-way and meet NC DOT Standards.
- Streets should not exceed a 15% grade.
- Streets shall have stabilized shoulders of at least three feet in width on both sides of the traveled way.
- An approved turn around shall be provided where access is a dead end.
- Please see Section 91.56 of the Subdivision Regulations for additional street standards.