

Town of Lake Santeetlah (The Town)

Council Meeting Minutes

Initial Draft Subject to Council Approval

February 11, 2020

Mayor Jim Hager called the meeting to order at 11:00AM. Councilmembers Keith Predmore, Roger Carlton, Craig Keith and Diana Simon were present for the meeting. Town Attorney Craig Justus, Town Administrator Kim Matheson and Clerk Emily Hooper were also present. Public Works Technician Eric Hayes was not available.

The first order of business was the approval of the agenda. There were no additions or changes necessary Councilmember Roger Carlton made a motion to approve the agenda as presented. Councilmember Predmore seconded. All approved, the motion carried.

Councilman Predmore made a motion to re-open the Public Hearing for the Lake Point Properties Variance Request. Councilmember Simon seconded. All others approved. The motion carried.

Clerk Emily Hooper swore in all those who wished to speak at today's hearing.

Attorney Bob Oast representing Lake Point Properties, introduced Jose Rosado, developer representative and Bill Tunnell, project architect. Oast reviewed the project plans that were initially approved in 2001/02. A Conditional Use Permit was issued for a Planned Unit Development. The permit issued provided flexibility to the developer for the PUD. Over the years the plans have changed for the project. The proposed plan was developed by Tunnell according to the guidelines and standards of the Town of Lake Santeetlah and Santeetlah Lakeside project. The pitched roof exceeds the 30 ft. height limitation and would require a 14' 9" variance.

Under North Carolina Law a variance can be requested when unnecessary hardship results from the inability to carry out zoning requirements. Oast explained the hardship is, the developer will not be able to complete the designed project without the additional height. The beauty of the lake and view for the houses nearby will all be maintained. The site proposed for this project is the only area within the Town where a project of this type could be built. It is zoned Commercial and the topography allows the project to be built without effecting the national forest or other homes. Past approval of a conditional use permit provided the developer with the assumption that a multi-family unit was expected to be built on the site which would likely result in a variance needed. The aesthetic of the building and its fit within the Town will be self-evident after Mr. Tunnel's presentation, according to Oast.

This project will need further approval after today's request, Oast pointed out. At this time the only thing being considered is the 14' 9" variance request for the height of the building. The Zoning Regulations for the Town of Santeetlah require both residential and commercial districts to follow the same height requirements making it difficult for commercially zoned areas to be flexible. Oast asked the board to consider granting the height variance. Mr. Rosado and Tunnell were both present to speak on behalf of the developer.

Jose Rosado, owns two homes within the Town of Lake Santeetlah. Rosado first came to the town in 1998. Rosado spoke as the representative for the developer. He has been involved with real estate investments and project developments since 1976. Rosado provided history of the PUD. He has been involved since the beginning of the development. The Town Council at that time (2001) did not seem to be aware of a Zoning Ordinance. The meeting held in 2001 explained the vision for the Old Lodge area. Though the plans have evolved over the years as marketing has changed the potential plan for multi-family housing in that area has remained the same. The plan for development at that time is reflected in exhibit #1 and #2 (attached to these minutes). In a meeting held March 8, 2001 the town moved forward with the plan for a PUD for up to fifteen dwelling units. The approval included steps that would need to be followed in order to receive final approval by the Town Council for development. Mr. Oast clarified the point he wanted to stress was that beginning in 2001 it was clear that the vision for the Old Lodge area included a project that could exceed the 30ft. height limitation. Specific approval for a height variance was not requested at that time (2001).

Oast stated that the Conditional Use Permit granted was silent regarding height. Attorney Justus disagreed. In the PUD provisions provided by the applicant it explains items that can be varied by request in the PUD process and height was not listed. Attorney Justus asked for a clear interpretation from the applicant, Are you asking for the Council to recall a previous approval for height variance, yes or no? If that is the situation then an appeal would be necessary rather than variance request which could require re-notice of the hearing. Mr. Oast clarified that the developer is requesting a variance for height from the Town Council at this time. The PUD ordinance was not clear and the Town Council advised the developer to follow these steps in order to proceed therefore the request today is for a variance.

Councilmember Roger Carlton asked for clarification of what the original plan for development was in (2001). Carlton recalled the plan being town homes. Rosado confirmed that the intention was always for this area to be a lodge, hotel or town homes. Rosado explained that in 2001/02 the following steps were followed: a meeting was held between the developer and Town Council (similar to today's meeting) in which the idea was presented concerning the vision for that area. The concept was approved by the Town Council and the developer proceeded to follow the guidelines for procedure set forth by the Council that day (explained in Exhibit #2). The Council hired an attorney who was at the time a Town resident to represent. Rosado briefly referred to the Development Agreement and the Conditional Use Permit summarizing that the Council agreed to award IBEX the permit to build the proposed multi-family unit (Rosado read paragraphs A and D).

Rosado explained that two marketing firms (Private Mountain Communities and Ralph Boden, Market Research Company) recently completed lengthy research on the area and both confirmed that condo units would be the best use of the area according to the market at this time. The height limitation effects the proposed condo units as it would require a flat roof building which would not agree with the character of the community or the aesthetic requirements for Santeetlah Lakeside. The Old Lodge area is zoned Commercial and the only area of this type within Lake Santeetlah. Rosado pointed out, referring to one of the exhibits submitted for the record, that there would be no other homes effected by the

construction of this condo unit. The land is flat with other homes lower in elevation resulting in a clear view for each unit.

Bill Tunnell, an architect and planner for forty years, received his architectural degree from the University of Tennessee. Mr. Tunnell has 40 years of experience in the field, 30 years with the firm TSW. The forty years have been largely specializing in resort and second home developments. Tunnell owned a home within Lake Santeetlah at one time and has family ties to the area that trace back for many years. Tunnell designed all the homes except one within Lakeside and many others within the Town. Tunnell has been party to the development from the beginning and attended the March 2001 meeting. Tunnell explained that in 2001 the expectation for the Old Lodge area was approved and understood by the Town Council. There was not a specific variance request made at that time as there was an understanding that the developer had the flexibility to build a building there that could exceed a 30ft. height limit. When the Old Lodge was built an eight ft. ceiling was standard. The original homes within the Town all were built with 8 ft. ceilings. Things have changed and the new standard is 10 ft. This increases the height of the overall building to accommodate. The plans have changed over the years for the area, town homes, cottages, re-designing the lodge, but after research it is clear that today the most marketable design includes condo units and Tunnell hopes that the Council will permit the developer to proceed with the proposed project granting the variance needed to do so. The location of the Old Lodge is optimal for this project. The central location of the site and flat surface of the land maintains the view from all areas. The guidelines, materials and aesthetics of the proposed project maintains the standards of Santeetlah Lakeside. Tunnell explained that the units could be built with 8 ft. ceilings and a flat roof outside the building and meet the requirements for height however this is not the best interest for the Town, the developer or those interested in purchasing a condo.

Attorney Brady Cody spoke as representative for Mr. William O'Keefe, a Santeetlah Lakeside resident. Mr. O'Keefe is strongly opposed to the project for the following reasons: The effects the proposed development would have on neighboring properties and the applicant's failure to satisfy the applicant's burden in NCGS. 160A-388D. Mr. O'Keefe does not feel the applicant has met the four elements of that subsection. According to NC Statute 160A in subsection 3D the hardship must not result in actions taken by the applicant. In this situation, Cody explained, it appears as though the applicant did create the hardship. Without the variance the three story unit and parking garage will not be permitted. What led to this hardship? The inaction of the applicant to complete necessary research of Zoning and PUD requirements within the Town. According to Mr. Rosado's testimony and the minutes from the January 21, 2020 meeting the project was approved with no knowledge of the height limit required. According to Mr. Cody simple due diligence could have avoided this hardship. The applicant moved forward with this project and essentially "backed themselves into a corner" with project designs that do not comply with zoning standards within the Town thus creating the hardship. The applicant has no option at this point but turn to the Council for a "way out." It is not the responsibility of the Town to "fix" the applicants negligence therefore on behalf of Mr. O'Keefe, Cody asked that the Town Council deny the request as presented.

Attorney Oast asked that Bill Tunnell point out Mr. O'Keefe residence on the aerial presentation. According to O'Keefe his property value would decrease upon completion of this project. Mr. Oast objected, stating that proof of this assumption would be needed to consider this argument.

Councilmember Carlton disclosed that he had communicated with Bill Tunnell since the Public Hearing in January. Carlton informed Mr. Tunnell that resident Jack Gross video tapes each meeting and could potentially supply a copy of the last public hearing for view if requested.

Councilmember Predmore asked if the civil site plan had been developed. Mr. Tunnell explained that the contour is 1902 above sea level. Predmore asked Mr. Tunnell to discuss site lines from the first and second level. Predmore explained that when lying on the floor on the first level the view would be the house (roof line) rather than a clear outdoor view. Tunnell explained this was considered when completing the plan. Tunnell stated that the roofline would be the view when lying on the floor on the first level but standing up the roofline would be below and mountains would be the view. (I didn't understand this exactly so it may be incorrect... Can someone clarify?)

Councilmember Carlton asked Mr. Rosado to comply with the following conditions upon approval: Rosado agreed that if the project was approved to move forward, during the construction process all steps would be followed to comply with State and Local standards.

- File a complete plat with the Town and Register of Deeds of the proposed project, Lakeside and a septic solution for each lot.
- A report/study from a knowledgeable source to confirm the Town has sufficient potable water and fire flow for the new project, Lakeside and potential development. (McGill & Associates completed a water study and confirmed the Town had adequate supply. A copy of this report has been submitted as part of the record).
- Hold a meeting with Fire and Rescue services to be certain a plan is in place in case of fire. There is only one other building of this height within the County (Hotel) and a mutual aid plan is in place in the case of fire in this building. Carlton asked for a similar plan.
- Request a letter from Brookfield explaining a drainage plan that is acceptable to Brookfield standards. The construction will cause drainage issues and a proper plan should be established in order to dispose properly.
- Detail a plan for solid waste removal at the new site.
- Develop and agree to a time limit for demolition of the Old Lodge (possibly two years).
- Notice any change of ownership within the developer's to the Town.
- As part of the Application would the developer be willing to reimburse the Town for any legal cost involved for representation during this process. (Attorney Justus stated, he would not advise this request)

Attorney Justus confirmed that if the variance is approved, reasonable conditions can be attached.

To move forward, Justus reviewed the four standards for a variance within the statute should be discussed one by one to verify if 4/5th of the board is in favor.

Jack Gross, asked for clarification according to building application fees collected. Gross asked if the only fee the Town was permitted to collect was an Administrative fee. Attorney Justus asked Gross to keep all questions related to the variance request at this time. The question will be answered at a later time.

Craig Keith referred to the Quasi-judicial handbook pg. 71, the applicant must show the nature of the hardship is greater for the applicant than others subject to the same restriction.

Attorney Oast, explained the property is one of the only commercially zoned areas within the Town and the only area in which a project of this nature could be built. The hardship is greater for the applicant than others due to the assumption given approximately 17 years ago that a project of this type would be permitted. The unit could be built in compliance with the 30 ft. height limit but would not be marketable. The hardship affects the development because the plan cannot be executed without variance approval.

Attorney Justus asked Mr. Oast if the plan presented to the Council in 2001 was available. Having this evidence to supply would allow the Council to see what was discussed and approved at that time. Justus stressed that it would be helpful to have a written document included in, Exhibit #3 Proposed Lake Santeetlah Development Plan, that continues to be referred to as the reason the developers in the situation today. A plan of what was proposed would be better than statements of "recollection, memory or oral testimony." Having the actual drawing of the plan that was presented to the Town Council in 2001 would be helpful.

The applicant presented a document similar to the one approved in 2001. According to Tunnell the plan presented is substantially if not exactly the same as the one approved by the Council. The date of the plan presented, July 4, 2002, was the official date property was offered for sale. Additional labels or logos could have been added, but suspects there were no changes with placement of buildings.

Rosado explained that over time there had been a number of colorized versions of the plan. Some for marketing purposes, developer use, but the point is each plan included multi-family housing in some form. July 4, 2002 was the official groundbreaking. A ceremony was held with exhibits displaying "A" the current project and "B" (attached) was presented but identified as future development with no official commitments. This gave the community the idea of what was planned for the area but nothing was concrete at that time.

Councilmember Carlton asked if the lodge area had ever been presented as anything other than multi-family housing. Rosado explained that at one time Town Homes could have been considered but confirmed that there had been many plans over the years as marketing had changed, however the developer's had always envisioned multi-family housing there.

The Santeetlah Lakeside Application for Conditional Use Permit was located (by Town Administrator Kim Matheson) and submitted for the record by the applicant, identifying the specific plan presented to the Council in 2001 (attached). Attorney Oast reviewed that after all testimony and evidence had been presented it had obviously been no secret that from the beginning of the

development there had always been a plan to develop multi-family units in this area. The developer's request that the Council understand marketing values have changed and from 2001 to now. This is the proposed project and approval would allow the project to move forward.

Attorney Oast requested that all records presented today be included as official evidence.

Councilmember Predmore made a motion to close the public hearing for deliberation. Carlton seconded. All others approved. The motion carried.

Attorney Justus reviewed the standards of the statute to the Council.

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Mayor Hager explained that he felt the hardship occurred due to economic circumstances and not created by the developer. This was the only area for a building of this type and the design was completed and could not proceed without a variance.

Predmore does not feel that hardship has been met by evidence presented. Predmore stated that the building could be re-designed in some manner to comply with the ordinance.

Simons agrees the hardship has been met and was due to a misunderstanding of the original PUD agreement in 2001.

Carlton agrees that the hardship has been met by the applicant. The developer's requirement to meet architectural standards required within Lakeside causes a need for variance request.

Craig Keith is uncertain if the hardship requirement has been met. Keith agrees that the developer does have a hardship in this case, but is uncertain about an "unnecessary hardship." Keith asked Attorney Justus to clarify if the requirement of "unnecessary hardship" has been met.

Justus clarified that according to the statute in order to grant a variance a hardship is not sufficient and an "unnecessary hardship" must be proven in order to approve. The factor that items are more costly is not a controlling factor when granting a variance. Location, size and topography of the land being unique could drive a hardship. Is unnecessary being driven by the developer or is there a factor due to the land that would cause the hardship to be unnecessary? Justus pointed out he would not provide an answer but only explanation for Keith to decide.

Councilmember Carlton asked if following the design guidelines for Lakeside in the planned project would qualify as an unnecessary hardship. Attorney Justus explained that decisions were to be made from records and evidence and he was not aware of evidence presented that detailed these guidelines. Mayor Hager pointed out that Tunnell had noted the building was designed to comply with standards and match other homes within Lakeside. The Lakeside guidelines are a written document filed with the Register of Deeds.

Moving forward:

- Mayor Hager agrees the applicant has met the guidelines.

- Predmore does not agree
- Simons agreed with Hager
- Carlton agrees
- Craig Keith agrees

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

- Councilmember Simon stated the area is unique and as identified the project would not be suitable for any other area within the Town due to Zoning. Simon feels as though there is a hardship due to location, size and topography.
- Hager agrees with Simon.
- Predmore does not agree.
- Carlton agrees that the project is unique. It is the only site of its kind in the area.
- Craig Keith does not agree that the standard has been met.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

- Councilmember Carlton pointed out he did not feel as though hardship had been brought on by the developer.
- Mayor Hager agrees
- Keith Predmore disagrees
- Simon agrees and has been aware of this project since she moved to the area.
- Craig Keith agrees

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice done is achieved.

- All Council members agreed.

Attorney Justus reminded the Council the vote must be 4/5. As a Councilmember you must feel as though all standards have been met in order to approve.

Councilmember Carlton made a motion to approve the 14' 9" variance request based on the substantial evidence presented today with conditions previously mentioned attached to the approval. There was no second to this motion.

Attorney Justus confirmed again that reasonable conditions could be attached to an approval.

Councilmember Simon made a motion to approve the variance request without the underlying conditions.

Councilmember Simon amended her motion to include, the approval of a 14' 9" variance request based on the material and representation made to the board by the developer at today's hearing. Mayor Hager seconded.

Councilmember Carlton offered an amendment to the motion. Assuming approval the Zoning Administrator be directed to deal with the impacts of this building how she sees fit.

Attorney Justus stated that the amendment presented would not be enforceable. The list of conditions presented earlier would be addressed as the project moves forward (if approved).

Carlton explained that Zoning is one of the most conflicting issues that a Town Council deals with and it should be handled properly. This project as presented will have great impact on the Town and should include the suggested conditions so they are handled as they should be by the developer.

Attorney Justus explained that in order for the conditions to be enforceable the motion must be specific.

Carlton asked the moving parties to entertain the following five conditions be included in the motion, a plat of every lot within Lakeside and the proposed project identifying the plan for sewage. Affirmation of adequate water supply for Lakeside, the proposed project, future development and fire suppression. A plan for fire/rescue services, solid waste plan and a drainage plan with Brookfield.

Justus explained that some of the conditions listed would be addressed without attaching them to the approval of the variance (such as), approval and confirmation of a septic solution for the entire area.

Councilmember Simon withdrew her motion.

Councilmember Carlton made a motion to re-open the Public Hearing. Councilmember Keith seconded. All others approved. The motion carried.

Councilmember Carlton asked the developer's representative or developer's attorney to please answer.

- Are you willing to provide a septic plan for the entire project based on a platting of the project? Jose Rosado answered, yes.
- Are you willing to take necessary measures to provide comfort that there will be adequate water supply both potable and for fire suppression for the project and Lakeside? Rosado answered, yes. To clarify, this would require a sealed letter of an engineer or qualified individual to verify.
- Are you willing to meet with appropriate officials regarding fire suppression and emergency services and submit a report? Rosado answered, yes. This requires the applicant to organize a meeting with the individuals and confirm in writing this meeting occurred and the outcome determined.
- Are you willing to meet with Brookfield and receive their input for drainage disposal during the construction process? The developer will meet with Brookfield to detail the erosion and drainage plan, seeking comments and suggestions. Jose Rosado confirmed.

- Are you willing to develop a solid waste removal plan and submit to the Zoning Administrator?
Rosado agreed.

Councilmember Carlton made a motion to close the Public Hearing. Councilmember Predmore seconded. All others approved. The motion carried.

Councilmember Carlton made a motion to approve the variance request with the evidence and materials presented today with the five specific conditions attached. Mayor Hager seconded. Keith Predmore opposed. The motion passed four to one.

After review of the January 21, 2020 Council Meeting Minutes there are no additions or changes necessary. Councilmember Simon made a motion to approve the minutes as presented. Councilmember Carlton seconded. All others approved. The motion carried.

Financial Report/Tax Report: Town Administrator Matheson presented reports as of January 30, 2020. The general account balance is \$53,736.37; the water operating account balance is \$20,018.75. Tax collection for January was \$26,242.82. This is prior to the fee being deducted. The check has not been received at this time. Councilmember Carlton made a motion to approve the financial report as presented. Councilmember Predmore seconded, all others approved. The motion carried.

Request for Public Comment:

Jack Gross pointed out the correct process to change a meeting date according to NC General Statute.

Gross asked the Council to consider the public comment from other residents as well as his research when making a decision to move from a five to three member Council.

Gross explained that the Council had expended \$94,000 in legal fees. That's 51% of the revenue received from property tax value. As of January 30, 2020 a total of \$40,979.76 has been spent in legal fees. This leaves \$53,020.24 in the budget for legal fees.

Old Business:

#1: Water System Repair and Upgrades/RFP for Well House Repairs: Discussed in the workshop session earlier today, see workshop minutes for detail.

#2: Draft Resolution to amend charter to Change number of Council members: Councilmember Carlton suggested that both resolutions presented be rescheduled for the March Council meeting. If approved the Public Hearing would occur in April. Attorney Justus confirmed that this would allow adequate time to place the item on the November 2020 election ballot. The Council can adopt an Ordinance to amend the charter, unless referendum is required. If the Council wishes to call for a referendum they can do so. Mayor Hager moved to continue the item for decision in March.

3: Draft Resolution to stagger terms for Council members: Item discussed above.

New Business:

1: Town Technician Maintenance Report: Eric Hayes was not available for report.

2: Vacancy on the TDA/Diana Simon TDA Report: Report provided at the workshop earlier today. See workshop minutes for details.

3: Budget Amendment:

General (Office Expense, Election Cost) - \$2,500.00

Water (All Office Expense) - \$511.22

The amendment was discussed in detail at the Workshop Session. See workshop minutes for further explanation. Councilmember Carlton made a motion to approve the amendments as presented. Councilmember Predmore seconded. All others approved. The motion carried.

4: Contract Quote for Sharp Printer and services: See workshop minutes.

5: Agriculture Agent Randy Collins and Friends of Joyce Kilmer representative, Jim Krinner discuss Kudzu removal: Discussed at the workshop. See workshop minutes.

Discussion:

1: Recycling as relates to County Solid Waste Study: See workshop minutes.

2: US Forest Service danger trees and power/internet service loss: Councilmember Carlton met with Ben Spatola from the US Forest Service and pointed out the trees within and near the Town that are threat of falling taking down power lines. Spatola pointed out that the trees can be marked and removed from the area but the Forest Service would not pay for cutting down the trees. Once the trees are marked if they are taken down and left there is no permit charge, if they are taken for firewood a \$20.00 permit is required. Mayor Hager plans to meet with Scott Kamps to discuss other trees that will be taken down and will point out these trees for Mr. Kamps to include in his quote. The quote will be placed on the March agenda for approval if needed. Attorney Justus explained that the Town can remove trees from Forest Service property but cannot do so from private property even with property owner permission.

3: Status Report on Alcohol Sales: The Town of Robbinsville Board of Alderman held a meeting at the Graham County Library to continue the discussion of alcohol sales within the Town. The library was full of those both in favor and opposed. After the speakers were heard the Alderman voted to defer a decision to place the item on the ballot for 60 days.

Motion for Closed Session: Councilman Keith Predmore read the motion for the Town Council to move into closed session. Councilman Carlton seconded. All others approved. The motion carried. The Council moved into closed session at 2:10PM.

Councilmember Simon made a motion to return to open session. Councilmember Predmore seconded. All others approved. The motion carried.

1: Consideration of Release of Closed Session Minutes: A Public Records request was received for specific closed session minutes. After review Councilman Predmore made a motion to release the following minutes: October 17, 2017 and the redacted minutes of March 9, 2018 which approve the

October minutes. May 18, 2018 and the redacted minutes of October 26, 2018 which approve the May minutes. Councilmember Keith seconded. All others approved. The motion carried.

Announcements:

The Planning Board meeting will be February 14, 2020 at 1:00PM at Town Hall.

The next Workshop session will be March 10, 2020 at 10:00AM at Town Hall.

With no further business at this time Councilmember Predmore made a motion to adjourn the meeting. Councilman Simon seconded, all others agreed. The motion carried. Mayor Hager adjourned the meeting at 2:55PM.

Meeting Adjourned

Jim Hager, Mayor

Emily Hooper, Town Clerk