

## **Town of Lake Santeetlah**

### **Zoom Council Meeting Minutes**

### **Initial Draft Subject to Council Approval**

**July 16, 2020**

Mayor Jim Hager called the meeting to order at 10:00AM. Town Administrator Kim Matheson called role of all Councilmembers. Keith Predmore, Roger Carlton, Craig Keith and Diana Simon were present for the meeting. Attorney Brian Gulden (assistant to Craig Justus), Town Administrator Kim Matheson, Clerk Emily Hooper were also present.

The first order of business was the approval of the agenda. Councilmember Carlton made a motion to amend the agenda and defer the Special Meeting minutes from June 17, 2020 to the August Council meeting. Item 4 in Old Business should be deferred to the next meeting for further review by legal counsel. Councilmember Simon seconded. All others were polled. The motion passed four to one. Councilmember Predmore opposed.

After review, there were no changes presented to the June 11, 2020 Council Meeting Minutes. Councilmember Simon made a motion to approve, Councilmember Keith seconded. Town Administrator Kim Matheson polled all other Councilmembers. The motion passed unanimously.

**Financial Report/Tax Report:** Town Administrator Matheson presented reports as of June 30, 2020. The general account balance is \$40,755.74; the water operating account balance is \$9,193.26. The tax collection in June was \$19.91. The remaining due for the 2019 year is: \$3,745.61. The water billing for March 30 – June 30 was just mailed which will increase the revenue in the water operating checking. Councilmember Carlton asked about the decrease of income in the water operating account. Matheson explained that the decrease was due to long term maintenance. There has been a transfer to cover maintenance for well houses, but water breaks and other water repairs have continued to decrease funds. \$9,000 was moved from the general reserves to complete well house repairs. No other funds have been moved from reserves at this time. The loan process is moving forward but not completed at this time. Matheson is working with Attorney Gulden and United Community Bank to complete all paperwork. Matheson provided a report of the existing loan not reflected in the water report: paid to date on principal - \$10,386, \$735.36 towards interest.

#### **Request for Public Comment:**

Tina Emerson pointed out if more records were available (Old minutes, Agendas, Zoning) on the website there wouldn't be as many public records requests.

Jack Gross asked who would have the opportunity to speak at the Public Hearing. Only those with standing or anyone can testify. Mayor Hager explained that anyone who wished would have an opportunity to speak at the hearing.

#### **Old Business:**

- 1. Water System Repair and Upgrades:** The repairs are underway. The loan documents will be submitted soon to the LGC (Local Government Commission) for approval. Matheson will work with Attorney Gulden when he returns from vacation to complete any further paperwork.
- 2. Update on response to Covid-19:** Governor Cooper has extended Phase 2 of re-opening until July 29, 2020. When re-open begins the Town Council will have the authority to limit the amount of people in Town Hall. Face Masks can be required. Attorney Gulden stressed that the amount of people who can participate in public meetings cannot be limited therefore the meetings will likely continue by Zoom until further notice.
- 3. Kudzu Eradication Proposal:** The proposed resolution has been reviewed by counsel and posted for review. Mayor Hager asked Councilmember Carlton to prepare a letter that will be sent to all homeowners that are effected explaining the program. Carlton agreed and made the motion to approve the Resolution removing Eric Hayes name and replacing with Town Maintenance Technician. Councilmember Keith seconded. All others were polled. Councilmember Predmore opposed. The motion passed four to one.
- 4. Approval of revisions to Zoning Compliance Certificate form & Fee Schedule:** This item was deferred.
- 5. Past Due Property Taxes:** Councilmember Carlton provided a brief history of Graham County Tax collection efforts. The collection rate for Lake Santeetlah remains above 97%. Carlton pointed out lingering past due amounts that should be written off to avoid a continued carry over. The larger amounts that are past due should be posted and identified attempting to collect payment. The Town Council would likely need a Resolution to begin the process of write-offs. Mayor Hager will contact Becky Garland and determine the appropriate process and provide a report in August.

#### **New Business:**

- 1: Consideration of Hiring a Zoning Administrator:** Attorney Gulden has prepared a Resolution for approval of hiring a Zoning Administrator. Brian Farley, real estate appraiser and magistrate, from Graham County is interested in the position. Farley has agreed to \$30.00 per hour with a three hour minimum per week. The Resolution will be sent to Town Council for review and further action will be taken at an upcoming Special Meeting.
- 2: Legal Liability Policy for Zoning Administrator:** Town Administrator Matheson has been seeking insurance coverage for a contract Zoning Administrator (if approved). Applications have been sent from both Gibson and Farley insurance. Attorney Gulden will complete the applications and return. Gulden will also research to determine if the policy should be a Town policy or personal for the contracted official.
- 3: RFP/Seek Proposals for Front Entrance Repairs:** No proposals have been received at this time. Administrator Matheson is meeting with another contractor this afternoon.
- 4. Installation of Security Cameras at Front Entrance:** The security cameras have been installed. Zito media is scheduled to install Wi-Fi at the front entrance on July 21<sup>st</sup>.
- 5. Budget Amendments:** Town Administrator Matheson provided descriptions of the amendments presented.

#### **General:**

All Pending Litigation \$2,688.28  
Jim Hager Legal Fees \$318.07

Funds for All Pending litigation and Jim Hager legal fees will be moved from unused funds from Bob Wehr legal fees.

Truck Gas \$328.25 Funds for truck gas will be moved from line item Repairs and Maintenance.

**Water:**

Office Expense \$786.39

Dues & Subscriptions \$40.00

Funds for office expense and dues and subscriptions will be moved from unused funds in line item N-Sight Annual Maintenance.

Chemicals \$761.67

Truck Gas \$162.12

Funds for truck gas and chemicals will be moved from long term maintenance.

Councilmember Carlton made a motion to approve both amendments as presented. Councilmember Predmore seconded. All others were polled. The motion passed unanimously.

**6. Designation of New Member to Southwest Commission:** Councilmember Carlton is the current representative for the Town of Lake Santeetlah. Carlton plans to resign. Mayor Hager asked if Diana Simon would be willing to serve as the replacement. Simon asked if she could speak with Councilmember Carlton about the requirements and make a decision at a later date. This item will be continued to the August Council Meeting.

**7. Request from Michael Colt for the Town to purchase and bury a drainage pipe:** An erosion issue continues to occur in the area where Black Bear Trail and Thunderbird Trail intersect. Mr. Colt, homeowner at 750 Thunderbird Trail is concerned as the runoff from Town owned property is effecting his boat dock. Mayor Hager met with Mr. Colt and agreed that the Town would purchase the pipe to keep this from happening but would not pay to have the pipe buried unless otherwise approved. The estimate for the pipe and materials is approximately \$1,000. Mr. Colt would like the Town to pay for the pipe to be buried which is proposed to cost \$1,150. The contract should be between the Town and the contractor since the pipe will be installed on Town owned property. The Town will purchase the pipe and ask for reimbursement from Mr. Colt for the cost to bury the pipe. Mr. Colt is replacing a portion of his retaining wall that has deteriorated. Approximately five feet of this wall will be on Town property. The wall is already on the property, Mr. Colt will only be improving what is there, no extensions. Attorney Gulden explained that he should sign a release waiving any rights or claims that he may have to the improvements made on Town Property. Mayor Hager will work with Attorney Gulden to finalize details and report back to Mr. Colt and the Town Council.

**8. Motion to Open Public Hearing:** Councilmember Carlton made a motion to open the Public Hearing for Variance request for 7 Santeetlah Point. Councilmember Predmore seconded. All other members were polled. The motion passed unanimously.

Zoning Administrator Kim Matheson provided a staff report for the variance request made by Fredrick Slagle at 7 Santeetlah Point. The notice of this hearing was placed in the Graham Star on June 29, 2020 and July 6, 2020. It was also posted on the website and bulletin boards at Town Hall. Mr. Slagle came into Town Hall in 2018 and provided detail of construction that would occur at his home on Santeetlah Point. At that time he was notified, by Town Administrator Kim Matheson, that there were no building requirements or applications needed for Lake Santeetlah. The project is complete and has since been identified that Mr. Slagle needed a 7ft. variance to be in compliance with the Town Zoning Regulations.

Slagle met with contractor, Kyle Garland, and learned that due to the topography of the lot and the large amount of rock on the lot it was in his best interest to complete the addition as it is presented. This required Mr. Slagle to need a 7ft. variance which Mr. Garland was not aware of until after the structure was complete.

Town Clerk Emily Hooper administered the oath to Rick Slagle and Kim Matheson.

All Councilmembers were asked if they had any reasons why they could not be included in the hearing today. All were polled and there were no conflicts.

Site visits or communications were disclosed.

Councilmember Simon has visited the site and talked with Kim Matheson in the past.

Councilmember Carlton drove by the area to observe.

Councilmember Predmore explained his experience of 30 years in Construction Management.

Councilmember Carlton has years of experience in Zoning matters and Hearings.

Mr. Slagle has no objections according to the disclosures.

**Public Comment:**

Jack Gross: According to survey provided Mr. Slagle needs approximately 20ft. rather than 7ft. Gross asked that this be clarified prior to proceeding.

Mr. Slagle presented his situation and explained that he wasn't aware of a variance needed until after his addition was complete. Mr. Slagle stated that he would have followed all covenants and restrictions as required by the Town if he had been aware of them and is trying to follow all steps necessary now to be in compliance. Mr. Slagle asked that the Council consider the site plan as part of the evidence.

Councilmember Carlton asked Mr. Slagle to clarify where the measurements were taken from to determine the 7ft. variance needed. Slagle explained that the Town completed the measurements and confirmed that a 7ft. variance is needed.

Keith Predmore asked if a geotechnical engineer provided a report about the rock on his site. Slagle explained that structural engineers came and determined the rock would prohibit construction in that area.

Matheson explained that she measured the area to determine the setback with Town Technician, Eric Hayes. Matheson stated that to the best of her ability a 7ft. variance is what is needed.

Diana Simon asked if Mr. Gross had permission from Mr. Slagle to measure setbacks on his property. Simon also asked if Mr. Slagle he had talked with his neighbors, John & Lauri Riemenschneider. Slagle identified speaking with them in a neighborly fashion but not about the construction to his home.

Matheson requested that the staff report and plat submitted by Mr. Slagle be admitted into evidence. Mayor Hager accepted.

Councilmember Carlton made a motion that the evidentiary portion of the hearing be closed.

Councilmember Simon seconded. All others were polled. The motion passed unanimously.

**Public Comment:**

Tina expressed her concerns that the idea of Zoning was to improve esthetics and in order for the Town of Lake Santeetlah to allow homes to become conforming the setbacks should be re-addressed.

Councilmember Carlton made a motion to close Public Comment. Councilmember Simon seconded. All others were polled. The motion passed.

Councilmember Carlton stated that this variance was peculiar as it is “after the fact.” The Town created the hardship. Mr. Slagle has followed the steps necessary to comply.

- Unnecessary hardship would result in the strict application of this ordinance. It shall not be necessary to demonstrate that in the absence of the variance.

- Jim Hager: Yes

- Roger Carlton: Yes

- Keith Predmore: Yes

- Craig Keith: Yes

- Diana Simon: Yes

- The hardship results from conditions that are particular to the property.

- Jim Hager: Yes

- Roger Carlton: Yes

- Keith Predmore: Yes

- Craig Keith: Yes

- Diana Simon: Yes

- The hardship did not result from actions taken by the applicant or the homeowner

- Jim Hager: Yes

- Roger Carlton: Yes

- Keith Predmore: Yes

- Craig Keith: Yes

- Diana Simon: Yes

- The requested variance is consistent with the spirit purpose and intent of the ordinance.

- Jim Hager: Yes

- Roger Carlton: Yes

- Keith Predmore: Yes

- Craig Keith: Yes

- Diana Simon: Yes

Councilmember Predmore offered a condition that the variance be approved as currently completed construction and does not pertain to any other part of the property. Councilmember Simon seconded. All others were polled. The motion passed. Councilmember Carlton offered a motion to approve the 7ft. variance request with the added condition. Councilmember Simon seconded. All others were polled. Councilmember Predmore was unavailable resulting in an affirmative vote. The motion passed unanimously.

9. Councilmember Simon made a motion to close the Public Hearing. Councilmember Keith seconded. All others were polled. The motion passed.

**10. Motion to Open Public Hearing for Variance Request for 310 Thunderbird Trail:** Councilmember Predmore made a motion to open the Public hearing. Councilmember Keith seconded. All others were polled. The motion passed.

Howard Serena stated his reason for standing would be that his home at 289 Thunderbird Trail, which is across the street from Dr. Hutsell will be effected by the height of Dr. Hutsell's new home. Mr. Serena feels that his property value will be decreased by the proposed re-construction.

Councilmember Carlton asked if this hearing was continued would Mr. Serena allow Councilmembers to visit his home to see the effects first hand. Mr. Serena agreed

Councilmember Carlton made a motion to approve Howard Serena as a party with standing. Councilmember Simon seconded. All others were polled. The motion passed.

Ralph Fette, owns the home at 301 Thunderbird Trail. Fette explained that his home would lose value if the lake view was blocked both by height and side by Dr. Hutsell building a larger home.

Councilmember Predmore made a motion to approve Ralph Fette as a person with standing. Councilmember Carlton seconded. All others were polled. The motion passed unanimously.

Town Clerk Emily Hooper swore in all witnesses, Howard Serena, Ralph Fette and Kim Matheson.

All parties affirmed, Mr. and Mrs. Hutsell, Howard Serena and Ralph Fette.

Mayor Hager read process and procedures for a quasi-judicial hearing. Matheson polled the Council there were no members with a reason not to proceed.

Mayor Hager read disclaimer of site visits or conversations with involved parties of the hearing.

Diana Simon has spoken with Dr. Hutsell asking permission to go onto the property to observe. Mr. Hutsell agreed and also extended the invitation to all other Council members. Councilmember Simon also spoke with Town Technician Eric Hayes for clarification and Zoning Administrator Kim Matheson.

Councilmember Carlton spoke with Councilmember Simon concerning permission to visit the site, he has also spoken with staff and visited the site to track potential building with a visual.

Mayor Hager spoke with Ralph Fette and referred him to Zoning Administrator Kim Matheson.

There were no other members with disclosures.

After hearing disclosures the members with standing were polled, Mr. & Mrs. Hutsell, Ralph Fette and Howard Serena and there were no objections to moving forward.

Councilmember Carlton made a motion to open the evidentiary portion of the hearing. Councilmember Predmore seconded. All others were polled. The motion passed.

Zoning Administrator Kim Matheson provided the staff report. The official notice of the hearing was posted in the Graham Star on June 29<sup>th</sup> and July 6<sup>th</sup>. It was also posted on the website and Town Hall bulletin boards. Dr. Hutsell requested a variance by email on May 28, 2020. Matheson visited the site with contractor Charles Toomey. It was determined he would need a front set back variance, side set back and height variance. The variance request was received June 10, 2020 by mail. Dr. Hutsell's home was built in the 1970's and completely destroyed by fire in 2019. His previous home was non-conforming. The front setback needed is 15ft. to build his home on the same footprint as before. Mr. Hutsell would like to build steps on the back of his home towards the lake which would require a 5ft. side setback. According to Dr. Hutsell his neighbor Mr. Brickell has agreed to the side setback. The proposed building is a four story home and would require a five foot height variance. The current zoning has two different definitions for height: 30 feet from the mean between the highest and lowest footing to the crown of the roof, and 30ft from the highest point of base elevation on the subject property to the crown of the roof. According to the plans provided by the contractor a 5ft. variance would be needed, but according to statements from Serena and Fette it seems that a higher variance may be necessary but difficult to tell exactly from the drawings provided. A hand drawn plan has been provided showing the proposed building which has been sent to the Council.

Councilmember Carlton asked for clarification exactly where the base elevation is measured from. The front section (a marker is shown at the site) would be the highest point of base elevation.

Councilmember Simon is also uncertain of where to measure from. Matheson stated the 5ft. variance determination came from contractor, Charles Toomey.

Mayor Hager pointed out that it is obviously unclear of exactly where to measure from to determine the height with the plans provided.

Dr. Hutsell explained the official plans that were completed was initially a re-model, but when the fire occurred this all changed. The measurements for base elevation should be from the pad that has been cleaned and cleared. Hutsell explained that only 12-24 inches will be needed for height but his contractor advised him to ask for 5 to be cautious. Dr. Hutsell spoke with his neighbor Mr. Brickell about the small encroachment that would be caused by the steps. The home will be built on the same footprint only extended by the steps (if approved). The fire damaged the trees on the lot which were removed and cleaned. This opened up a view for the neighbors across the road that wasn't there before. Dr. Hutsell acknowledged that he would not want his lake view blocked by building either and did not intend to do so for others. The 12-24 inches needed would not obstruct the view for others. Dr. Hutsell stated he cannot build further down towards the lake. Hutsell clarified the remaining pad that has been cleared from the original house is where the measurements are measured from for the height variance. He can change the pitch of his roof in order to comply if needed.

Councilmember Carlton asked Dr. Hutsell if he would be opposed to continuing the hearing for a specific date and time for all members to receive further clarification and make a more informed decision.

Councilmember Predmore stated that without an official site plan, architectural plan including elevations and site lines from neighboring properties it would be difficult to make an informed decision.

Dr. Hutsell does not want to go to the expense of providing architectural plans for a variance request that may not be approved. If approved he would complete those drawings. Dr. Hutsell explained that there are many homes in the area near his location that are non-compliant and doesn't feel that he should be treated any differently.

Councilmember Carlton explained a balloon could be placed at 35ft to allow each member to visit the site and get a better picture in order to make a decision.

Dr. Hutsell requested that the Hearing be continued for 10 days in order for the Council to visit the site and observe exact view obstructions that may occur from new construction.

Howard Serena stressed his concern with not having at minimum preliminary drawings prior to decision making.

Ralph Fette asked why he could not dig down to build rather than going higher.

Attorney Gulden reviewed that it is the applicant's burden to provide evidence for the board to make a decision. The Town Council will use the information that is provided in order to make a decision.

The hearing will be held July 27, 2020 at 10:00AM by Zoom. Information will be sent out by email.

There was no further evidence to present at this time.

**Public Comment:**

Jack Gross is concerned with the Zoning Regulations and what trouble it could cause in the future.

Gary Lane asked if a variance would be needed if the roof was flat.

Tina Emerson stated that according to NC Statute you cannot zone for a view.

Ralph Fette is concerned with the septic system being large enough to handle the proposed home.

**12. Motion to Continue Public Hearing:** Councilmember Keith made a motion to close the public hearing. Councilmember Simon seconded. All others were polled. The motion passed.

Councilmember Carlton made a motion to return to the Council Meeting. Diana Simon seconded. All others were polled. The motion passed.

**13. Action from Public Hearing:** There is no action from this hearing.

## **Discussion:**

**1. Transparency Public Records Request:** Councilmember Predmore explained that the comment made by Tina Emerson at the beginning of the meeting was something the Council should research and look into. Predmore is concerned with staff time that is taken for the large number of request. From June 2019 – June 2020 there have been 206 public records request from two individuals. Many of the requests are a matter of opinion or unclear and complicates the search efforts by staff. Predmore understands that all individuals have the right to ask questions but in the manner the two individuals continue to do so staff becomes overwhelmed and are unable to complete other Town duties in attempt to complete the requests in a timely manner. The last request response consisted of 32 pages, two lawyers review and a letter from staff. The request consisted of 31 years of research resulting in a large amount of time from both Clerk and Administrator. Councilmember Carlton asked if charges for the requests could be required prior to staff releasing the request. Mayor Hager will work with Town Administrator and Attorney Gulden to compose an updated fee schedule for public records requests and present at the August Council meeting. Councilmember Carlton asked if he could find out an answer concerning payment as well and report his findings to the Council.

**2. New State Statute on Water Cost Recovery from New Development:** Councilmember Carlton reported that the Governor has recently signed and given local governments the ability to charge development for certain costs related to water systems. Councilmember Carlton asked Staff and attorney to investigate and determine if the Town of Lake Santeetlah could receive these benefits if needed. Attorney Gulden asked for the specific statutory number and agreed to research.

**3. Request for Town Attorney to prepare policy recommendations regarding protecting employees from bullying, harassment and excess time demands due to public records requests:** Attorney Gulden is working on this item and will report at a later time.

Motion for Closed Session: Councilmember Predmore read the motion for the Town Council to move into Closed Session. Councilmember Simon seconded. All other members were polled. The motion passed unanimously. The Town Council moved into Closed Session at 1:45PM.

Councilmember Carlton made a motion to return to open session. Councilmember Simon seconded. All others were polled. The motion passed unanimously.

**1. Action from Closed Session:** Councilmember Simon nominated Roger Carlton and Keith Predmore to the litigation committee. Councilmember Keith seconded. All others were polled. The motion passed.

Announcements: The next Town Council meeting will be August 13, 2020. This meeting will be held by Zoom unless otherwise notified.

With no further business necessary Councilmember Predmore made a motion to close the meeting. Councilmember Keith seconded. All others were polled. Mayor Hager adjourned the meeting at 2:30PM.

**Meeting Adjourned**

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Jim Hager, Mayor

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Emily Hooper, Town Clerk