

Town of Lake Santeetlah

Council Meeting Minutes

May 16, 2017

Mayor Jim Hager called the meeting to order at 10:00AM. Council Members Connie Gross, Karen Anderson, Bob Wehr and Keith Predmore were present for the meeting. Town Administrator Kim Matheson, Clerk Emily Hooper and Public Works Technician Eric Hayes were also present.

Mayor Jim Hager explained that the agenda would be amended today in order to accommodate the Brookfield presentation given by Myra Hair. Item #3 under New Business: Myra Hair/Presentation of requirements necessary to maintain dock permit will be the first item of business. Hager acknowledged the meeting will be conducted in two parts with a twenty minute recess following the Brookfield presentation. Councilwoman Connie Gross made a motion to amend the agenda as necessary. Councilman Bob Wehr seconded. All others approved, the motion carried. Myra Hair, Brookfield Smoky Mountain Hydro Compliant Specialist, and Brett Williams Brookfield Land Use Specialist, were both present to explain the most recent issues that were discovered during the individual pier permit renewal process that will affect many Lake Santeetlah home owners. Last year each lakefront homeowner received a five year renewal agreement from Brookfield requiring updated information. As those were received and Brookfield began updating records assuring that all records were in compliance for potential cooperate audits, two areas of incompliance were discovered within the Town of Lake Santeetlah. According to the Brookfield Shoreline Management Plan in order to qualify for a dock permit a lake front homeowner must own at least fifty feet of shoreline frontage, and own the property down to the high water mark of the lake (1817). These regulations were approved and regulated by FERC (Federal Energy Regulatory Commission) in 2006 prior to Brookfield purchasing from Alcoa. When the Town was established a three foot section was created surrounding the lake intending to be a walkway. The lots were surveyed, not including this three foot strip. The walkway was never completed and some property owners were aware of the strip and followed through with purchasing it from the Town, while others were unaware the strip even existed. Brookfield will no longer issue a permit to those homeowners who do not own the three foot strip as the Town of Lake Santeetlah is truly the lakefront property owner. The question was asked, it has been this way for years and years, if the Town doesn't care, why bother? Hair, clearly explained in order to remain compliant and qualify for a dock the property owner must own to the shoreline. Hair stated that Brookfield is asking that each property owner research their own deed and plat to assure that at least fifty feet of shoreline is owned and the three foot strip abutting the lake. Provide proof of both items to Brookfield and your dock is not in jeopardy. Those who are not in compliance must begin the necessary steps by the deadline of September 30, 2017. By looking at the plat of your property those who show a straight line, or any section between the property line and the lake have likely not purchased the strip from the Town. Verbiage within the deed could read as follows: "to a point 1817 thence-running the contour of the lake." Property owners who do not own the three foot strip should contact the Town to identify the necessary steps to purchase. A list is being composed of those who have already discovered they do not own and within the next month a surveyor will be contacted to survey the lots including the strip. The updated survey will then proceed to an attorney for a new deed. A resolution must be adopted by the Town Council and advertise the sale in the local paper for 10 days. The survey, advertising and legal fees will be the responsibility of the homeowner. We hope that due to the large number of property owners who will need the services of both local surveyors and attorneys a lower price will be given. The town will accept bids for the three foot strip of land. The Town has the capability to deny or refuse any and all bids received to prohibit a spectator from attempting to purchase the strip in front of another homeowner's property. Those who do not own fifty feet must attempt to purchase from a neighbor in order to gain the shoreline frontage needed. In some cases if two adjoining property owners do not own fifty feet the two can use both properties to apply for one dock permit. Hair stated, "We are not looking to come out here and take people's docks. We just want to make sure our records are true." In the Shoreline Management Plan there is a grandfathering clause. This clause will allow those with less than fifty feet to maintain their dock until the

sale of the property or their passing. At that point the home would no longer qualify for a dock. Brookfield is extending the offer to those individuals effected to add a child or loved one to their deed by September 30, 2017 so the dock can be maintained through one more generation. At any time if the property is sold the "grandfather clause" will not transfer. If those with less than fifty feet of shoreline frontage can work with neighbors and buy the amount of footage needed then maintaining a dock will no longer be an issue as they will then comply with all requirements from Brookfield. It comes as a surprise to many that they do not own down to the shoreline. It has been an assumption by not only Brookfield but property owners and the Graham County Tax Assessor for years that the property owner's property line abutted the lake however in many areas this is not the case.

Zach Anderson at 144 Thunderbird Trail was on the phone during Hair's presentation as the changes will affect his home. Anderson and John Cochran both currently have docks and their home is separated by a Town road from the lake. The property on the other side of the road is currently Town property. Anderson explained that the home had been in his family for over 20 years and having a dock had never been an issue. According to Anderson there was an agreement between his family and the Town that if the property was maintained they would continue to be permitted a dock. Hair explained that despite any past agreements from this point forward the property owner must own to the lake in order to attain a dock permit. No one is certain of how these property owners were ever permitted a dock, but after having one for years the Town would like to see them have the opportunity to continue. Upon approval by the Town Council the Town of Lake Santeetlah will offer to sell fifty feet of lake-frontage to these homeowners. A fair market value price will be proposed (which will be provided by a certified appraiser) to Anderson, Cochran and Marsha Mathews who also lives in the area and has shown interest in obtaining a dock permit but never been able to get one. If these property owners neglect to purchase the lake front land from the Town their dock permit will not be renewed by Brookfield.

Councilman Bob Wehr asked, what is the harm in having the docks there just as they have always been? Hair explained that when completing the individual pier permits it is her responsibility to assure that all regulatory guidelines have been followed. For a dock to be maintained all FERC guidelines must be followed and currently that is not the case. Wehr asked if audits were not completed on a regular basis. Hair acknowledged this was the first audit of these records that had been completed since Brookfield purchased Alcoa. Pier permits are renewed every five years and this was the first renewal within Brookfield. Updating the database is time consuming and often becomes a difficult task with the large amount of people who buy, sell, and inherit lake front homes. With a new dock permit one of the first requirements is to confirm that at minimum of fifty feet of shoreline is owned by the property owner. It has always been the assumption of Brookfield that the property owners owned to the lake. In order to coincide with GPS mapping and comply with FERC regulations these two areas of concern must be addressed from this point forward. Jack Malinowski, resident of Lake Santeetlah, shared his concern of those people who have invested large amounts of money purchasing lake front homes that may now be at risk of depreciation of home values due to the lack to shoreline frontage. Malinowski asked if Brookfield would show any consideration to those individuals. Hair reiterated that Brookfield would extend the possibility of allowing those with less than fifty feet to add someone to their deed. As long as the property was passed down to those individuals and not sold the property could maintain a dock permit until the passing of those who were added to the deed. This is the extent of consideration from Brookfield for these property owners in this situation. Malinowski stated that Brookfield permitted new docks and transferred others that were contrary to the Shoreline Management Plan so why enforce the rule now. Hair explained again that the assumption had been that the property owners did own to the shoreline and this was recently discovered as incorrect. Those with less than fifty feet had been issued a dock prior to Brookfield purchasing from Alcoa had been overlooked in a transfer. Steve Poole ask what guarantee Brookfield was offering to assure homeowners with less than fifty feet that they would not lose their dock. Hair enforced that Brookfield wasn't offering any guarantee but only a recommendation to add someone to the deed to extend the allowance of a dock permit. The dock permit would then be transferrable but only in one case. Dock permits are not transferrable with the sale of property. Hair confirmed to Mr. Poole that those who do not have fifty feet are at risk of losing their dock. Malinowski stressed that the homes affected by this change totaled millions of dollars and would suffer a great loss in valuation. Therefore in his perspective there

were two options for homeowners in this situation: Band together and sue Brookfield and its employees who were responsible for this or work with Brookfield to change the requirements. Some of these homes have had docks for thirty years with no issues, therefore the questions becomes, why can't things continue as is. Hair informed that there was also the possibility of neighbors who did not own fifty feet combining shoreline frontage to apply for one dock permit and sharing a dock between two homes. Enforcing this guideline, according to Hair will prevent those with twenty feet of lake-frontage requesting a dock, and others arguing the same. At some point there must be a requirement. The main area of concern from Brookfield is those who own no lake front property and are being accessed as lake-front with docks at this time. Despite this being the main concern of Brookfield there is a solution for these individuals as the Town is the lakefront property owner and can sell the property owner the land needed. The property owner will simply need to follow the steps referenced above. Malinowski asked Hair if she was familiar with mountainous lakes such as Lake Santeetlah where there were several homes in a cove. It is difficult for every property to maintain fifty feet. By removing the docks there becomes a safety hazard for those trying to access the lake from the shoreline. Hair explained that Brookfield as the licensee works with the Forrester Service, NC Wildlife and the Park Service to help fund boat ramps, put-ins and access areas to provide safe places to access the lake. Malinowski argued that taking the docks was eliminating the safety factor and creating a hazard and liability. Hair explained that currently the liability would fall on the Town as they are the true "lakefront property owner." Malinowski stressed that it was the intent to work with Brookfield to determine a solution for this issue and asked for names of representatives that may be contacted concerning the sudden enforcement of a policy that had been in place for years and years. Resident Dick Eyestone ask if this policy had been tested in court. Hair stated that Brookfield dealt with the Forest Service last year concerning permitted docks that were non-compliant however that is much different than dealing with private property owners. Mayor Jim Hager referenced Brookfield's Shoreline Management Plan with a question of the grandfather clause. In Hager's interpretation he stated that unless there was a safety or environmental issue with the dock the grandfather clause would continue. Hair stated that there are two parts to the grandfather clause: Part one being what Mr. Hager explained and Part two is specific to the individual meeting the qualifications of all requirements. After speaking with FERC, Hair explained that part two clarifies that the individual must meet requirements despite safety and environmental hazards. Those requirements include: a minimum of fifty feet of shoreline, own down to the shoreline and own a home on the property. Resident Tom Callahan asked how certain the property owners could be that Brookfield would not change the policy once again. If steps are taken to comply to the current guidelines then what can Brookfield provide to assure the property owners that the policy will not change making many non-compliant again. Hair stated that from her perspective that if a property owner can provide proof they own both the three foot strip and fifty feet of shoreline frontage then they are complaint and will be issued a renewal. Callahan stated that property owners thought that they were in compliance by completing the renewal every five years. However there has been a "curve ball" thrown by Brookfield and could there be another one in a year from now? Callahan ask if there was an estimated number of homeowners effected by both issues. Town Administrator Kim Matheson and Land Specialist Brett Williams were not able to provide an estimate at this time. Mayor Jim Hager explained that the process that a Municipality must follow in order to sale land is according to NC Statute 160A 269. This statute deals with the purchase of surplus property from the Town. Hager recommended that all those who need to purchase the three foot strip contact Town Hall and so the referral to a surveyor would be a mass number and could be subject to a discount. Callahan asked that with all the necessary steps to purchase land obviously taking time what if the September 30, 2017 deadline was not met. Hair stated that if it was only a matter of adding someone to the deed the deadline allowed a generous amount of time. If a property owner can demonstrate that progress is being made towards purchasing the land from the Town Brookfield will not remove the dock. Again Hair stressed that they were not here to take people's docks from them and clearly understands that this is a sensitive issue. Debbie Malinowski, clarified that if a home was currently for sale that owned less than fifty feet and there wasn't a neighbor with enough footage to give, or a neighbor willing to sale the footage that home would then lose their dock. Hair agreed that would be the case. For those homeowners with less than fifty feet Hair stated that she hoped neighbors would work together and sale footage to one another helping everyone to have the opportunity to maintain a dock permit. Resident Margie Whitehead asked if docks were required to be

placed in the center of the property line. If a neighbor is willing to sale to another then would their dock have to be moved in order to “re-center” the dock with the property? Brett Williams confirmed that the dock would not have to be moved in that case. Also, Whitehead ask if two joining property owners applied for one dock that would be shared how would it be determined where that dock would be placed. Williams explained that the two neighbors would consult with the Brookfield representative and decide on an area that is agreed upon by both parties. Resident Bill Campbell asked where the fifty feet verbiage come from. Is that state or company generated? Hair stated that during the relicensing process back when Alcoa owned the property that number was agreed upon to eliminate people from saying, I own ten feet and I want a dock. Due to the mountainous area those in a cove would be crowded if the standard was decreased from fifty feet according to Hair. The Town did sign off during the relicensing process in agreement of this footage requirement. Resident Dick Eyestone affirmed that he was involved with the relicensing many years ago and sat through hours and hours of discussion much of that including the idea of grandfathering. According to Eyestone “Alcoa was 100% clear that if you had a dock you would not lose it.” Despite the updated verbiage Alcoa affirmed that if you currently had a dock and had less than fifty feet there would be no risk of losing it. Eyestone stated that if those who own less than fifty feet do not determine a solution he expects this to end up in court. Wehr explained that the Shoreline Management Plan is updated every ten years and the Town would have the authority to dispute the requirement at that time. Also, clarifying other areas of question such as the grandfather clause. Councilman Wehr also explained that he reached out to Congressman Mark Meadows and Senator Richard Burr to no avail as they are not involved with this issue. FERC would be the licensing agency to call with complaints and questions. Wehr stated that could be done as a group or individually. Hair agreed that FERC would be the appropriate entity to reach out to referencing Project 2169. Resident Joe Simons stated that it seems this is a black and white issue for Brookfield and they are attempting to eliminate all gray areas. Simons questioned if a lease or easement from the Town would not suffice rather than requiring property owners to purchase the land. Hair stressed that it would benefit the Town and property owner to have it clearly settled with a deed rather than lease. Anderson ask what would be the problem with allowing all docks that were permitted at this time that do not propose any danger or safety risk being grandfathered. Any new permits could be required to comply with FERC requirements. Hair continued to express to all those present that it was not the intent to remove docks but to work with property owners to resolve the issues and provide a safe, attractive place to enjoy for years to come. If the property owner does not own the property to the shoreline they will not be able to renew their dock permit. The Shoreline Management Plan can be found on Brookfield’s website and clearly explains the guidelines, what can and cannot be grandfathered, the measurements and specifications for a dock. Hair encouraged residents to use the plan as a guide for compliance. The process of how land is transferred or sold in not a concern of Brookfield according to Hair. Brookfield simply needs proof of compliance. Again, the deed should reference, “the 1817 contour line of the lake.” When determining whether the property is owned by the property owner or Lake Santeetlah the deed should state “thence-running the contour of the lake” and the plat should NOT show a straight line at the lake shore. The lake is not a straight line therefore if a straight line is present on the plat the property line is not running contour. Dick Eyestone explained that he had been through process approximately five years ago and it was a fairly simple and cost a minimal amount. Mayor Jim Hager stated that as we had discussed previously the Town will follow the Statute of how to properly sale land. The worry is that a speculator would attempt to offer an upset bid on the properties advertised and try holding the property owner hostage with that piece of property. The Town has the statutory authority to reject any and all bids and prevent that from happening. Hair encouraged all property owners to help spread the word so that we can get everyone educated of the requirements and work together to comply with the plan. If we weren’t going to comply with the plan then why have it? Hair stated that without the specific guidelines we would have no boundaries and authority to tell anyone they couldn’t pitch a tent on the three foot strip of property and apply for a dock. She stressed the importance of why the residents should agree and work to resolve this issue to protect themselves from such. If there are questions concerning the Shoreline Management Plan, or the two areas of concern presented today please call Brett Williams, (865)-803-3899 or email Myra Hair at myra.hair@brookfieldrenewable.com. With no further comments the meeting will recess for twenty minutes and return to session at 11:45AM.

After review of the April 18, 2017 Council Meeting Minutes there were no additions or changes necessary. Councilwoman Connie Gross made a motion to approve. Councilman Keith Predmore seconded. All others approved, the motion carried.

Financial Report: Town Administrator Kim Matheson reviewed the balance sheet through April 30, 2017. The balance in the General Operating Checking is \$100,306.34, Water operating \$12,630.48. The Water Meter account has \$2,548.80 remaining after all equipment has been purchased and installed. The remaining funds can be paid back on the loan at UCB and this account should be closed. Councilmember Bob Wehr confirmed with Public Work Technician Eric Hayes that he has all the supplies necessary to replace any faulty valves as well as extra meter sets. The warranty begins for the automatic read meters the date of purchase therefore no meters will be kept on hand but ordered on an as needed basis for warranty purposes. Hayes agreed that he didn't need anything at this time that would require the use of those funds.

Request for Public Comment: Tina Emerson, of Santeetlah Trail stated that the Town should look at the road below the Cochran and Anderson property as the area below has been washed out causing a risk of road damage. Emerson suggested the Town use the funds allotted to upgrade the front entrance to fix the area that is undermined. If the area is not repaired the road could fall costing a large amount of money to repair. If Cochran and Anderson purchase the strip of land discussed during the Brookfield presentation the land would no longer be Town property. Mayor Hager informed Mrs. Emerson that John Cochran had plans to fix the area and build a ramp down to the lake.

Old Business

#1 Cochran/Anderson Property on Santeetlah Trail: As referenced in the Brookfield presentation Cochran and Anderson will need to purchase at least fifty feet of lakefront property in order to continue to maintain a dock permit. This makes their situation somewhat different than the others. The two homes are currently valued around 45,000 and purchasing the property will increase the land value to approximately 250,000. Both homeowners are interested in purchasing, however want to know the cost prior to any commitments. Marsha Mathews, a third homeowner in the area will be offered the same option as this would allow her the lake frontage needed to apply for a dock permit (Mathews does not currently have a dock). Dana Jones, a certified appraiser will be requested to provide a fair market value price that could be offered to those homeowners. Town Administrator Kim Matheson will contact Dana Jones and schedule a date. A report will be provided at the June Council Meeting.

#2 Approval of Water Policy Updates: The water policy was updated to include a reference to the state Statute of the penalty enforced to anyone who may tamper or damage their water meter in any way. The tap fee was raised to \$1500.00 on the Building Application. This often requires a backhoe, plumber and materials. The fee to install a meter was increased to \$400.00. This fee will only be charged to those who have never had a meter. The new automatic read meters and software value over \$300.00 each. Councilwoman Karen Anderson made a motion to accept the changes. Councilman Bob Wehr seconded. All others approved. The motion carried.

#3 Approval of Occupancy Tax Collection for Lake Santeetlah: The Town of Lake Santeetlah has discussed the possibility of collecting occupancy tax for three years. At this time there are twenty five confirmed rentals listed on VRBO and Cherokee Realty Website. A few others are listed but have not been confirmed. Councilman Bob Wehr explained that last year from the nine rentals in Lake Santeetlah listed through Cherokee Realty Graham County received \$6,700.00. This same amount would be received by Lake Santeetlah if the collection of Occupancy Tax is implemented. After much research the funds seem to be more than originally expected. Wehr confirmed that Graham County would proceed to collect the additional 3% if the Town neglected to do so. Therefore either way, the rentee would be paying the full 6%. Wehr stated that further clarity is needed however feels that enough information will be gathered to make a decision within the next month. Councilwoman Connie Gross made a motion to table the item to the June Council Meeting. Karen Anderson seconded. All others approved. The motion carried.

#4 Lakeside Road Turnover/Recordation occurred 4/24/2017: The Lakeside road turnover has been completed and recorded. The property owners within Lakeside that Town Staff has contact information for have been notified of the transfer. From this point forward the roads will be maintained just as the others within the Town. The next scheduled mowing for May 23 will include Lakeside.

#5 HMC Paving/DOT Chip-n-seal: A mass email was sent asking all those interested in having a parking pad paved while HMC is working in the Town to please notify Town Hall of contact information to be forwarded on to HMC. We have several residents interested and have provided HMC with the information. Dean Staples called and expects to be in Town next week and hopes to contact the homeowners. The repairs in Lakeside and repaving of Santeetlah Point is scheduled the first of June. DOT is scheduled in July to chip-n-seal all roads that were not completed two years ago. The estimate from DOT to complete this project is \$64,000. This will include \$32,000 that was included in the FY16-17 budget and \$32,000 that will be in the FY17-18 budget.

#6 Approval of Well House Damage Repair: The Town received three bids to repair the well house that was destroyed by a tree in March. Covenant Construction was the lowest bidder at \$7,985.00. The check has been received from the insurance company along with some requirements for the contractor completing the repair. Councilman Keith Predmore will assist in converting the proposal into an official contract. The contractor will sign the contract prior to beginning construction. Councilman Bob Wehr made a motion to approve Covenant Construction as the contractor assuring he follows all requirements sent by the Forest Service. Councilman Connie Gross seconded. All others approved. The motion carried.

New Business

#1 Options for Public Lake Access: The Town owns property at two locations that residents have shown interest in making a "public access" spot. The Town Council agreed that this would be a project for the TPOA. The Homeowner's Association could consult with these homeowners, devise a plan and report to the Town Council. The Council could make a decision at that time. Resident Dan Martin expressed his concern with such a small area being a public access spot. In the past those using the access spots left trash, used neighboring docks and invaded property. This would be addressed prior to the Town approving the use of the spots.

#2 Unauthorized installation of steps on Town Property: The steps were built at Lois Anderson's residence on Thunderbird Trail. Again as referenced earlier there was an agreement between the Town and the homeowner as long as the area was maintained properly the dock would be permitted and the use of the land was allowed. If Anderson proceeds to purchase the land from the Town the steps will no longer be in violation.

#3 Myra Hair/Presentation of requirements necessary to maintain dock permit: Moved to Item #1.

Discussion Items

#1 Tax Report 2016: There were no tax collections in the month of April. The Town of Lake Santeetlah's collected percentage for 2016 as of April 30, 2017 was 99.5%.

Councilwoman Karen Anderson made a motion to move to Closed Session. Pursuant to the provisions of North Carolina General Statute 143-318.11(c), I move that the Town of Lake Santeetlah Town Council go into closed session for the purpose of considering personnel matters as defined in and allowed by North Carolina General Statute 143-318.11 (a) (6) and North Carolina General Statute 160A-168. Councilman Bob Wehr seconded. All others approved. The motion carried. The Town of Lake Santeetlah Town Council is now in Closed Session.

Councilwoman Connie Gross made a motion to move from Closed Session to the regular scheduled Council Meeting. Councilwoman Karen Anderson seconded. All others approved. The motion carried.

Announcements:

Mayor Jim Hager announced that there would be a Budget Hearing May 27, 2017 at 10:00AM at Town Hall followed by the Final Sewer Study Presentation given by Vic D'Amato. The next Planning Meeting will be June 15, 2017 and the Council Meeting June 20, 2017 both at 10:00AM.

With no further business at this time Councilman Bob Wehr made a motion to adjourn the meeting. Connie Gross seconded, all others agreed. The motion carried. Mayor Jim Hager adjourned the meeting at 12:48PM.

Meeting Adjourned

Jim Hager, Mayor

Emily Hooper, Town Clerk