

**TOWN OF TRYON
BOARD OF COMMISSIONERS
SEPTEMBER 20, 2016 6:00 P.M.
PUBLIC HEARING: Text Amendment for Lake Lanier
TOWN HALL - MCCOWN ROOM**

Present: Mayor Pro Tem Bill Ingham

Absent: Mayor J. Alan Peoples

Commissioners: Roy Miller, Bill Crowell, Crys Armbrust

Staff Present: Town Manager Zach Ollis
Police Chief Jeff Arrowood
Attorney Bailey Nager

Town Clerk Susan Bell
Comm. Dev. Dir. Paula Kempton

CALL TO ORDER

Mayor Pro Tem Ingham called the public hearing to order. He asked everyone to keep their comments to three minutes so that everyone has a chance to speak. At the end if there is more time then they will allow people to add comments.

Zoning Administrator Kempton stated that on August 16, 2016, at the board's regular meeting scheduled a public hearing for September 20, 2016 to receive comments from the public regarding a recommendation from the Board of Planning and Adjustment to amend Section 7 of the Declaration of Regulations and Restrictions Governing the Use of Lake Bed at Lake Lanier. The current restriction prohibits commercial use and business activities conducted over the lake. Lake Lanier Property owner, Mark Kerhulas has requested a text amendment to Section 7 to allow and read as follows: "Commercial and business activities conducted over the lake bed are prohibited except by the existing Lake Lanier Tea House and its existing dock and boat garage".

Attorney Nager stated that the Town of Tryon owns the lake bed of Lake Lanier. The Town of Tryon has municipal authority in North Carolina and as a property owner in South Carolina has no municipal authority whatsoever. The Town owns just the lake bed and the Town has the right to control what happens over the lake bed. It doesn't have ordinance authority over that, because it has no municipal authority. It did a long time ago establish a set of regulations, restrictions, which it is entitled to do, governing the use of the lake bed. Mr. Kerhulas is proposing that the town amend one provision of those regulations and restrictions. That's a provision that says that there shall be no commercial activity over the lake. That provision has been in place continuously since at least 1990. It turns out that Greenville County also has zoning of the entire Lake Lanier area. It includes both residential properties around the lake and the lake bed itself. The zoning is that there is a 7.5 residential zoning district that is very limited on things that can be done in the district. Commercial is not allowed in that zoning district. He understands that the Lake Lanier Tea House may or may not have a grandfathered

basis to continue to do commercial activity at that location on the land, but tonight we are talking about over the lake. Given that the lake bed is zoned residential and not for commercial use and given that to this point the town's regulations and restrictions say that there will be no commercial use, if the town was to amend its regulations and restrictions and allow any type of commercial use, the proposal tonight is to amend the restricted use to Mr. Kerhulas' dock, not the entire lake. Obviously the Town of Tryon has the potential to act contrary to Greenville County's zoning if you amend the regulations and restrictions. Paula has been in touch with Greenville County zoning administrator. Basically if the Town changes the regulations and restrictions and Mr. Kerhulas starts conducting commercial activities based on that change, he will then be violating the Greenville County zoning which says no commercial activity, strictly residential. The Town of Tryon could also have a problem if those circumstances were to occur, because the Town owns the lake bed and now commercial activity is allowed over the lake and now Greenville County could potentially come to the town and say that they are going to site the town in violation of their zoning ordinance. Paula had a conversation today with a fellow and he felt that they would probably not be upset at the town.

Paula stated that he had stated they would not have any issues with that, but this is the process. It's a two part process. Nager stated that he is assuming that we don't get to part two. The Town makes their change and Mr. Kerhulas starts his commercial activity. He feels the Town would have a problem because the lake is zoned residential. The other way that things could happen is that you make this change and before Mr. Kerhulas goes forward and conducts commercial activity, that he could go to Greenville County and ask them to change the zoning, the Town of Tryon as the property owner would have to go with him seeking rezoning of the lake bed to allow commercial activity over the lake bed.

Stu Davidson asked if they could do commercial activity over the entire lake bed. Nager stated it would depend on the request to Greenville County and what they approved. Commissioner Armbrust stated that the Town of Tryon is the singular property owner of Lake Lanier, submerged so everything would have to generate from this office.

Jerry Atkins stated that the ordinance that Tryon has, plus the ordinance from Greenville County is responsible for preventing Bed & Breakfast to exist every 1500 feet around the lake. That would give them the privilege of renting rooms for a single night and providing their guests with the privilege of using the lake. If you could imagine the large number of guests, can you imagine the nightmare? This is what would happen if the lake becomes commercial.

Nager stated that it would depend on what the request of the rezoning was and what was approved. If they were talking about the property around the lake, that would be different than the lake bed. The Town only has regulations and restrictions.

Jerry Atkins stated that you also provide encroachment permits that allow the use of the lake bed where docks are constructed. So in that since you are complicit in allowing commercial uses. Nager stated that the Town allows for docks over the lake, but not commercial.

Henry Turner stated that in his discussions with Greenville County Council he asked why his taxes are higher than those on the lake bed. The response that he was given was that the Town of Tryon receives a courtesy rate. So if you turn the lake bed into commercial, have you given any thought to what your taxes would be on 136 acres of commercial property?

Stu Davidson asked if they could hear from Mr. Kerhulas to see what his thoughts were on this. Mr. Kerhulas stated that his initial thoughts on this was to correct an oversight on zoning. He had no idea that his property was rezoned to residential. He had submitted a deed from 1946. He just wants to accent an existing business. He would like to give people a place to wait on their table or have a drink after dinner. The previous tenants were a nightmare. He's not interested in putting a band on the dock. He's heard a lot of bad things about bands and jet skis. He's trying to return the property to the way it was.

George May former resident of Lake Lanier. He had great times at the Tea House. He just wonders if the Tea House reopens as a restaurant, would there be a possibility for a customer to have the opportunity to go to the dock and order a drink from the bar. Is that the situation? Mr. Kerhulas stated no. Mr. May asked what if a person goes to restaurant and orders a drink and takes over to the dock. That is nothing more than what he used to do from his house. His problem is that a commercial bar was going to be on the dock. Mr. Kerhulas stated that there are certain regulations that he would have to go through.

Nager stated the request that has been made is to allow commercial activity on this particular dock. If this is approved then it would allow any potential commercial activity. It is wise to be mindful of any commercial activity or maybe tighten up on what is allowed.

Stu Davidson lives across from the Tea House has lived for three years with no commercial activity. He could feel the music from the dock in his house. The road was impassible, there were people in the road drunk. The owner asked the Town of Tryon if people could have drinks on the dock. This turned into a full-fledged party and that led the residents to deal with Greenville County. His understanding was that letters were sent, but the owners still allowed. The bands received tickets, because of the noise ordinance. He doesn't want to go through this again. The second story dock was not approved by the Town and the town did nothing about it. If it was a nice quiet restaurant like when Theo ran it, it would be nice. The deed from 1972 states that if the property becomes a nuisance then the neighbors can stop it.

Paula stated that the text is before you and you don't have the authority to rezone.

Robin Edgar stated the intentions of Mr. Kerhulas is good, but the property is for sale. You have to go to Greenville County for a rezoning. To change something for an individual is to change it for generations. Mr. Kerhulas stated that there can always be provisions put in. It is for sale, but he hasn't sold yet. The problems were from the boathouse down below not at the Tea House. Greenville County has a noise ordinance that states you have to be quiet at 10:00 p.m.

Allen Smith stated this has to do with encroachments over the lake. There were bad instances when Ms. Otto was there. In 1982 it makes reference to the rights that can be changed. The rights of the Tea House were written out. The place sitting there empty makes it a detriment to the lake. Exceptions can be made. Mr. Kerhulas has ninety something signatures for the Tea House. It does need to be controlled. Just write in Tea House in your encroachment permit.

Brad Whitney stated that jet skis are very dangerous. The Tea House is a viable place in our community and needs it back. The complaints are that the Tea House is loud. There are certain ways to control it. He has been told that he couldn't take his pontoon and tie it up at the dock and go over to the Tea House and eat, because the dock isn't commercial. He would like to see the Tea House back at Lake Lanier.

Carol Whalley lives above the Tea House stated that she supported the Tea House. She is the secretary to the Lake Lanier Civic Association and they support the Tea House. She hears conversations in the parking lot. The cove is louder than the Tea House. She remembers music before the dock was ever built. People knew when they moved there that the Tea House was there.

Jerry Atkins stated that people are thinking about the Tea House and the way it was, not the way it could be.

Steve Carruth stated that if you buy next to a football field then you know it is going to be loud, so if you buy next to a lake then you should know that it will be loud. It's a lake that is enjoyed by hundreds of people. You can set limits and hopefully people will follow. Mr. Kerhulas stated that everyone knows the place is there.

Tim Wright lived on the lake in the 70's stated that he has watched the lake evolve into a weekend retreat and now it is transmitting into a retirement home and vacation home. Lake Lanier is not the lake without the Tea House. This needs to be worked out. The lake was developed around the Tea House. There is no need for this rif.

Dean Gregory lives close to the Tea House stated that it has been noisy and would like to see some compromise.

Commissioner Crowell stated that for the Town it is leave it as it is or reverse it. Mayor Pro Tem Ingham asked if the board could put limits on the sale of alcohol. Nager stated South Carolina ABC would have control over it, but he is not a 100% sure on that.

Paula stated that it would require the partnership with the Town of Tryon and Mr. Kerhulas. Mr. Smith stated that it would be a great thing. Commissioner Armbrust stated that he has attended the Tea House for forty years. This community is advertised as the friendliest town in the south. He hopes there is a partnership with the Town of Tryon and Mr. Kerhulas.

Jerry Atkins stated that we don't know who is going to own the property. He asked if this could not be tabled until there are new owners. Kathy Gregory asked if there is a mutual aid with Greenville County for first responders and fire. Fire Chief Davis stated that we do have agreements with them. Ms. Gregory asked about police coverage. Police Chief Arrowood stated that you would have to call Greenville County. Arrowood stated that they don't have jurisdiction in South Carolina. Nager stated that the Town of Tryon has no jurisdiction over boats on the water.

Henry Turner asked if the Town of Tryon co-ops with landowner and goes to Greenville County to obtain the zoning what is the Town's liability. Nager stated that the Town only owns the lake bed. The Town already has potential liability for anything that happens over the lake.

Commissioner Crowell stated that you can't hardly go past idle speed, because of the docks and swimmers. The homeowners association needs to do something. All the Town of Tryon wants is the water.

Paula stated that Mr. Kerhulas has made a request for this property only and everything considered today is for this property only. Tryon has to make a decision and after talking to Greenville County this would be done on a case by case issue.

Mayor Pro Tem Ingham closed the public hearing.

J. Alan Peoples, Mayor

Attest:

Susan B. Bell, Town Clerk