

TABLED
PASSED

OCT 17 2022

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

DATE: APR 07 2022

ORDINANCE NO. 219 (2022)

An ordinance amending the Lands Committee procedures in Cherokee Code Section 117-34 expanding the Committee to six Tribal Council representatives and clarifying the Committee's authority and responsibilities.

WHEREAS, procedures for the Tribal Lands Committee ("Committee") are expressed in Cherokee Code Sec. 117-34; and

WHEREAS, the Committee has been delegated the authority to hold and conduct hearings to settle property line disputes and mediate other real property disputes over lands and possessory holdings owned by and between the Tribe and its enrolled members; and

WHEREAS, the Committee consists of three voting members of Tribal Council and one alternate who is also a member of Tribal Council; and

WHEREAS, the Committee hears disputes across the Qualla Boundary but does not currently have representatives from each community; and

WHEREAS, the Committee is proposing to expand the Committee to six Council members with one Council member from each community so that in the event of a dispute every enrolled member will have a representative from their community on the Committee; and

WHEREAS, this ordinance change also proposes any appeals to decisions coming from the Committee would be heard by the remaining Tribal Council members who did not vote at the Committee; and

WHEREAS, the Committee is also proposing changes to Sec. 117-34 to more clearly delineate its authority in the Cherokee Code to include the ability to authorize property divisions which the Committee has historically executed as well as give it the authority to make administrative corrections to possessory holding records located within the Tribal Realty Office; and

WHEREAS, the Lands Committee unanimously approved these changes at its regularly scheduled meeting on February 24, 2022.

1 NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee
2 Indians assembled, at which a quorum is present, that Chapter 117 shall be amended
3 to read as follows:

4
5 Chapter 117 – Tribal Government

6
7 Article III – Boards and Committees

8
9 **Sec. 117-34. Lands Committee; procedures.**

10
11 (a) *Scope and purpose.* The purpose of these policies and procedures is to provide uniformity,
12 consistency and order in:

- 13
14 (1) Holding and conducting hearings before the Lands Committee.
15
16 (2) Providing appropriate procedures for appeals of Lands Committee decisions.
17
18 (3) Informing interested parties of the procedures for appearing before the Lands
19 Committee.
20
21 (4) Setting forth the authority, nature, and purpose of the Lands Committee.
22
23 (5) Governing real property disputes over all-trust lands owned by the Eastern Band of
24 Cherokee Indians, ~~whether trust or non-trust~~.

25
26 It shall be the goal of the Lands Committee to resolve disputes between family, ~~and~~ Tribal
27 members, and interested parties that involve the ownership or inheritance rights of any land held
28 in trust for the Eastern Band of Cherokee Indians, including the land located within the Qualla
29 Boundary and reservation of the Eastern Band of Cherokee Indians. Whenever possible, the Lands
30 Committee shall give the interested parties the opportunity to resolve the disputes without the
31 intervention or adjudication of the Lands Committee. Section 16 of the Charter and Governing
32 Document grants the Tribe the authority to direct the control and management of all real property
33 belonging to the Tribe. If an interested party disagrees with a decision made by Lands Committee,
34 it may appeal the decision to the Tribal Council pursuant to C.C. 117-34(f).

35
36 (b) *Definitions:*

- 37
38 ~~(1) Alternate means one of three predetermined Tribal Council members appointed by the~~
39 ~~Chair of the Tribal Council to serve in cases where a conflict of interest may exist with~~
40 ~~respect to a regular Lands Committee member or when a regular member is absent.~~
41
42 ~~(2)~~ Appeal means a written request for review of an action or inaction of the Lands
43 Committee that is filed with the Chairman of the Tribal Council.
44
45 ~~(3)~~ Appellant means any interested person who files an appeal in accordance with these
46 policies and procedures.

- 1
2 (4) ~~Notice of appeal~~ means the written document sent to Tribal Council, or any successor
3 body appointed to hear the appeal of the Lands Committee decisions, indicating that the
4 decision is being appealed.
5
6 (5) ~~Person~~ means any Indian or non-Indian, individual, corporation, tribe, or other
7 organization.
8
9 (63) ~~Enrolled Member~~ or ~~Tribal member~~ means a member of the Eastern Band of Cherokee
10 Indians who has been placed on the Tribal rolls, ~~including first generation descendants~~
11 ~~as defined in the Tribal Code.~~
12
13 (74) ~~Fees~~ means the amount to be charged to an appellant who wishes to have his case reheard
14 following a final decision of the Lands Committee.
15
16 (5) First generation descendant means someone who is the child of an enrolled member of
17 the Eastern Band of Cherokee Indians or adopted by an enrolled member of the Eastern
18 Band of Cherokee Indians as defined in §16 of the Charter and Governing Document
19 and Cherokee Code Section 28-2(a).
20
21 (8) ~~Lands Committee~~ means the body appointed by the Tribal Council to make decisions
22 regarding boundary line and other land disputes.
23
24 (96) ~~Hearing~~ means the formal presentation of evidence, witnesses, documents, or other
25 materials to the Lands Committee.
26
27 (10) ~~Indians~~ means all person who are members of a tribe as defined by 25 U.S.C. 1301.
28
29 (11) ~~Interested party~~ means any person who asserts a claim to land within the boundaries of
30 the Eastern Band of Cherokee Indians trust lands.
31
32 (127) ~~Immediate family~~ means spouse, parent, child, or sibling, wife/husband,
33 parent/child (whether by blood or adopted), siblings, in-laws, grandparent/grandchild,
34 step-parent/step-child, and aunt/uncle/niece/nephew.
35
36 (8) Interested party means any person who has a direct financial stake or property interest
37 in land that is the subject of a dispute in front of the Lands Committee.
38
39 (139) Land means all real property held in trust for the Eastern Band of Cherokee Indians
40 or possessory interests assigned to the Tribe or its Tribal members or first-generation
41 descendants of Tribal members, that land located within the boundaries of the Eastern
42 Band of Cherokee Indians Reservation.
43
44 (10) Lands Committee means the body appointed by the Tribal Council to make decisions
45 regarding boundary line and other land disputes.
46

1 (11) Notice of appeal means the written document sent to Tribal Council, or any successor
2 body appointed to hear the appeal of the Lands Committee decisions, indicating that the
3 decision is being appealed.

4
5 (12) Person means any Indian or non-Indian, individual, corporation, tribe, or other
6 organization.

7
8 (13) Possessory interest or possessory holding mean an area or parcel of Tribal land that has
9 been assigned to or is recognized by the Tribal government as being the holding of, the
10 Tribe, a Tribal member or group of Tribal members. The assignment or recognition
11 grants to the holder of the interest certain rights, enumerated in Tribal law, in the
12 possessory interest.

13
14 (14) Tribal Realty Office means the place for official recording of title documents and other
15 instruments affecting ownership of interests of real property owned by the Eastern Band
16 of Cherokee Indians or possessory interests assigned to the Tribe or its Tribal members
17 or first-generation descendants of Tribal members.

18
19 (c) Lands Committee generally.

20
21 (1) Tribal Council Chairman shall appoint five seated Tribal Council members to the Lands
22 Committee.

23
24 (2) A quorum shall consist of three (3) voting members of Lands Committee. In the event
25 that a voting member cannot attend a Lands Committee meeting, a seated Tribal Council
26 member from the same community may sit on the Lands Committee and vote in their
27 place.

28
29 (ed) Authority and jurisdiction. The Lands Committee is established in accordance with section
30 117-10 of the Cherokee Tribal Code and empowered to make decisions settling boundary line
31 and other land disputes between Tribal members. Review of Lands Committee decisions shall
32 be done in accordance with these policies and procedures and may be heard only through
33 Tribal Council as set forth in section 117-10 and section 16 of the Governing Document and
34 Charter of the Eastern Band of Cherokee Indians (1986). The Lands Committee is hereby
35 granted the following authority:

36
37 (1) To settle and provide final decisions over possessory holding boundary line disputes.

38
39 (2) To authorize divisions of possessory holdings when interested parties own the possessory
40 holding in common in the event of a dispute.

41
42 (3) To approve administrative corrections for property records held in the Tribal Realty
43 Office.

44
45 (4) To amend Lands Committee policies and procedures subject to Tribal Council approval.
46

1 ~~(de)~~ *Hearing before the Lands Committee.*

2
3 (1) *Applicability.* The provisions of this section shall apply to any person ~~anyone~~ who shall
4 appear before the Lands Committee.

5
6 (2) *Request for hearing.* Any ~~tribal-member~~ interested party may request a hearing before
7 the Lands Committee by sending a written request to the Tribal Realty Office. The
8 request shall include the following information:

9
10 (A) A description of the property dispute.

11
12 (B) An outline of the issues to be heard by the Lands Committee.

13
14 (C) A list of all person or entities that may have an interest in the disputed property.

15
16 (D) Copies of any agreements, contracts, liens, rights-of-ways, or other documents that
17 may affect the property.

18
19 (E) The reason(s) for requesting a hearing and resolution sought.

20
21 ~~(F) A statement that there is no previous Lands Committee ruling more than a year old.~~

22
23 Failure to include the above information in the request for hearing may result in a
24 rejection of the request and require a re-submission of the request to be in compliance
25 with this section. ~~In addition, h~~Hearings ~~will shall~~ be denied if the ~~Tribal Realty Office~~
26 Lands Committee determines the issues subject to the request have been resolved in
27 another forum with authority to resolve them. ~~that a previous ruling (on the same issues)~~
28 ~~by a committee or by Council is in place.~~

29
30 (3) *Hearing procedures.*

31
32 (A) The Lands Committee shall meet on the second and fourth Thursday of every month
33 to consider requests submitted in accordance with subsection (d)(2) of this section.
34 The hearings shall be conducted on the record.

35
36 (B) The Lands Committee shall not be bound by technical rules of evidence but shall
37 allow all relevant evidence into the proceeding.

38
39 (C) Interested parties ~~Tribal-members~~ shall be given an opportunity to address the
40 Lands Committee and present relevant evidence that will assist the Committee in
41 resolving the dispute. Relevant evidence shall include, but not be limited to, maps,
42 property records, such as assignments of possessory holdings, conveyances and
43 transfers of possessory holdings, contracts or other written agreements, testimony
44 of witnesses, history of the property and other evidence deemed appropriate. The
45 Committee shall have the sole discretion to determine what evidence is relevant to
46 the proceeding.

1
2 (D) When it appears appropriate, the Committee may elect to convene the hearing on
3 the disputed property or as a part of a hearing conduct a site visit to assist in
4 resolving the matter.
5

6 (E) ~~Tribal members~~ Interested parties appearing before the Committee shall have the
7 right to be represented by counsel at their own expense or to appoint a spokesperson
8 to speak for them.
9

10 (F) Prior to any hearings being held, the Tribal Realty Office shall notify all interested
11 parties of the hearing at least ten (10) days prior to the date of the hearing. Included
12 in the notification shall be a copy of the Lands Committee's policies and procedures.
13 If a majority of the interested parties are represented, a hearing will be held and a
14 decision rendered. If a majority is not represented at the first meeting, no hearing
15 will be conducted and a second notification will be sent to all interested parties ten
16 (10) days prior to a second scheduled hearing. The Tribal Realty Office may
17 provide notice of the hearing to interested parties by mailing, electronic mail, or
18 through a local publication. Any failure to appear for a hearing after receiving
19 notification from the Tribal Realty Office may result in a Committee decision that
20 adversely affects the unrepresented party. Any person who cannot appear for a
21 scheduled hearing may elect to have a representative appear on their behalf by
22 forwarding a notarized statement to the Tribal Realty Office appointing their
23 representative.
24

25 (G) Upon presentation of all relevant evidence, the Committee may render the decision
26 immediately, or may take the matter under further advisement or consideration. In
27 the event the Committee chooses to consider the matter further, a final decision
28 shall be issued in writing to all interested parties, within ten (10) days of the hearing.
29

30 ~~(H) A majority of Committee members shall consist of two or more Committee~~
31 ~~members.~~
32

33 ~~(H)~~ After two notices have been given, the Lands Committee ~~can~~ may make a decision
34 regardless of whether or not a majority of the interested parties have replied to the
35 notice or are present at the hearing.
36

37 ~~(4) Re Hearing before the Committee. Following a decision of the Lands Committee, any~~
38 ~~Tribal member affected by the Committee's decision, may request a new hearing. If the~~
39 ~~request is made within one year of the prior ruling, the Lands Committee will consider~~
40 ~~any new evidence presented by Tribal member. Said request shall be in writing and shall~~
41 ~~contain the following:~~

42 ~~(A) Name of individual making the request.~~

43 ~~(B) Reasons for the request.~~

44 ~~(C) Any new evidence to be considered by the Committee.~~

45 ~~(D) Names of all individuals that may be affected by the new hearing.~~

1 The request shall be submitted to the Tribal Realty Office. The individual requesting the
2 new hearing shall be required to deposit with the Tribal Finance Office sufficient funds
3 to cover a per diem payment (per diem rate to be the same as the rate currently used by
4 Tribal Council) for each Lands Committee member. The Tribal members shall also
5 provide proof of payment to the Tribal Realty Office at the time the request for re-hearing
6 is submitted. If the party requesting the re-hearing prevails at the re-hearing, the amount
7 paid as a fee for the re-hearing shall be returned to that party.

8 ~~(5) Re Hearing before Tribal Council.~~ If the request for a rehearing is made more than one
9 year after a prior Lands Committee hearing, the request for a new hearing must be
10 submitted to Tribal Council. In this case, Tribal members shall be required to deposit
11 with the Tribal Finance Office sufficient funds to cover a per diem payment for each
12 member of Council. The Tribal members shall also provide proof of payment to the
13 Tribal Chair at the time the request for a re-hearing is submitted. If the party requesting
14 the re-hearing prevails at the re-hearing, the amount paid as a fee for the re-hearing shall
15 be returned to that party.

16
17 ~~(64) Conflicts of interest.~~ Conflicts of interest and standards of ethical conduct described in
18 C.C. 117-45 shall apply to Lands Committee meetings and its voting members. No
19 Committee member shall preside or vote in any matter in which he/she has a personal
20 interest. Further, no Committee member may participate in any dispute in which a
21 member or their immediate family has an interest. In the event a Committee member has
22 a conflict in accordance with this section, they shall be replaced on the Committee by
23 one of the two alternates during the course of the hearing.

24
25 ~~(ef)~~ *Appeals of Lands Committee decisions.*

26
27 (1) *Applicability.* This section shall apply to all appeals from decisions made by the Lands
28 Committee by any Tribal member interested party who may be adversely affected by the
29 decision.

30
31 (2) *Notice of final decision.*

32
33 (A) The Tribal Realty Office Lands Committee, in accordance with subsection
34 ~~(de)~~(3)(G), shall mail all interested parties known to the Committee an affidavit of
35 mailing along with written notice of the Committee's decision.

36
37 ~~(B) Failure to give such notice shall not affect the validity of the decision or action of~~
38 ~~the Committee, however the time within which an appeal may be filed shall not~~
39 ~~begin to run until notice has been given.~~

40
41 ~~(EB)~~ All final decisions of the Lands Committee shall include a paragraph containing the
42 following language:

43
44 "You may appeal the decision of the Lands Committee to the Tribal Council within
45 30 days of the date of this notice by submitting a notice of appeal to the Tribal
46 Council Chairman through the Tribal Operations Program."

1
2 (3) *Appellate procedure.* Any ~~Tribal member interested party~~ affected by the decision of the
3 Lands Committee shall have the right to appeal the decision to the Tribal Council in
4 accordance with the procedures set forth in this section.
5

6 (A) The person seeking review shall submit a letter to the Tribal Council Chairman
7 within 30 days of the notice of the final decision of the Lands Committee. ~~The~~
8 ~~written appeal is to be directed to the Tribal Council Chairman and is to request a~~
9 ~~hearing before the seven (7) Tribal Council members who did not vote on the~~
10 ~~dispute at issue in the Lands Committee, and shall be required to deposit with the~~
11 ~~Tribal Finance Office sufficient funds to cover a per diem payment for each member~~
12 ~~of Council. (See procedures outlined in subsection (d)(5) above.)~~ The letter shall
13 contain the following:
14

15 (i) Reason(s) for requesting the appeal.

16 (ii) All parties affected by the decision of the Lands Committee.

17 (iii) A copy of the final decision of the Lands Committee.
18

19 (B) The Tribal Council Chairman shall review the request, along with any other
20 information included with the request, to determine if review of the Lands
21 Committee decision is appropriate. In considering the request, the Tribal Council
22 Chairman shall consider the following:
23

24 (i) Was the requesting party given an opportunity to present their position before
25 the Lands Committee?

26 (ii) Does the request contain relevant evidence not considered by the Lands
27 Committee?
28

29 (iii) Does the decision of the Lands Committee appear to violate any provisions of
30 Tribal law?
31

32 (iv) Does the request contain new evidence not presented to the Lands Committee?
33

34 ~~(v) Any other information deemed necessary to complete the matter.~~
35

36 (C) If review of the appeal is deemed appropriate by the Tribal Council Chairman, the
37 Tribal Council Chairman shall schedule an appeal hearing before the Tribal
38 Council. The decision of the Lands Committee shall be stayed until such time as
39 the appeal is heard and decided. matter shall be presented at the next session of
40 Tribal Council for review.
41

42 (4) *Scope of review.*
43
44
45
46

- 1 (A) All matters presented to Tribal Council shall be reviewed solely on the basis of the
2 criteria listed in subsection (ef)(3)(B). ~~Review of the Lands Committee's decision~~
3 ~~by Tribal Council shall reconsider the evidence presented at the Lands Committee~~
4 ~~hearing to determine if the actions of the Lands Committee violated due process as~~
5 ~~defined in these procedures, or if the Lands Committee violated Tribal law.~~
6
7 (B) If it is determined that ~~the decision of the Lands Committee violated due process or~~
8 ~~Tribal law, Tribal Council~~ there is new evidence that the Tribal Council decides
9 should be considered by the Lands Committee, the Tribal Council shall remand the
10 matter to the Lands Committee for further proceedings. ~~consideration.~~
11
12 (C) If it is determined after a review of the record of the Lands Committee that there
13 was an error in the application of law, or that there were no facts upon which to
14 base the conclusion and final decision, the Tribal Council shall reverse the decision
15 of the Lands Committee and issue a new ruling.
16
17 (ED) ~~If it appears there was no violation of due process or Tribal law, Tribal~~
18 ~~Council shall uphold the decision of the Committee.~~ Any decision of the Tribal
19 Council regarding the appeal shall be voted on by the Tribal Council and sustained
20 by a majority of the members of the Tribal Council permitted to participate in the
21 appeal.
22
23 (DE) For purposes of this section and the appeal, no Lands Committee member who
24 participated in the initial findings before the Lands Committee shall be allowed to
25 vote on any issue on appeal from the Lands Committee.
26
27 (EF) All decisions of Tribal Council regarding the actions of the Lands Committee are
28 final and not subject to further review or consideration by any other body or forum.
29
30 (fg) *Prior acts or laws.* Any and all prior resolutions, ordinances or codifications of such that
31 operate in conflict with the procedures set forth herein are hereby rescinded.
32
33

34 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are
35 rescinded, and that this ordinance shall become effective when ratified by the
36 Principal Chief.
37

38 *Submitted by Tribal Lands Committee*

39 *Teresa McCoy, Chair, Big Cove Community Representative*

40 *Boyd Owle, Birdtown Community Representative*

41 *Tommye Saunooke, Painttown Community Representative*

The attached **Resolution**/Ordinance No. 219 dated APRIL 7, 2022 was:

PASSED (X)

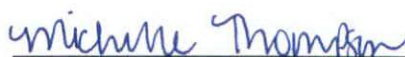
KILLED ()

and ratified in open Council on OCTOBER 17, 2022 by 82 voting for the act
and 0 members voting against it as follows:

VOTE	FOR	AGAINST	ABSTAIN	ABSENT
Richard French	X			
Teresa McCoy	X			
Boyd Owle	X			
Bucky Brown	X			
TW Saunooke	X			
David Wolfe	X			
Adam Wachacha	X			
Bo Crowe	X			
Bill Taylor				X
Albert Rose	X			
Dike Sneed	X			
Tommye Saunooke				X
	82	0	0	18



TRIBAL COUNCIL CHAIRMAN



ENGLISH CLERK



PRINCIPAL CHIEF

APPROVED (✓) VETOED ()

VETO UPHOLD () VETO DENIED ()

DATE: 10/19/22

I hereby certify that the foregoing act of the Council was duly:

PASSED (✓)

KILLED ()

and ratified in open Council after the same has been interpreted by the Official Interpreter and
has been fully and freely discussed.

INTERPRETED ()

OMITTED ()