

# ARTICLE 8. REVIEW BODIES AND OFFICIALS

## §8.1. Board of Commissioners

### §8.1.1. Powers and Duties

- A. The Board of Commissioners shall be responsible for the adoption of comprehensive land use plans for Lincoln County or portions thereof and amendments to those plans.
- B. In execution of the provisions of this UDO, the Board of Commissioners shall be responsible for final action regarding the following:
  - 1. Text amendments (§9.3);
  - 2. Rezoning (§9.4);
  - 3. Planned development review (§9.5);
  - 4. Preliminary plat review (§9.6);
  - 5. Waivers of subdivision standards (§9.6);
  - 6. Major site plan review (§9.7);
  - 7. Appeals of final decisions on TIA (§9.8);
  - 8. Special use review (§9.11); and
  - 9. Zoning vested rights (§9.20).

## §8.2. Planning Board

### §8.2.1. Establishment and Composition

The Planning Board is established pursuant to G.S. §160D-301.

### §8.2.2. Composition

#### A. Number and Term

The Planning Board shall consist of nine members, one member from each township and four at-large. Members of the Planning Board shall be appointed by the Board of Commissioners for designated terms. A Planning Board member may be appointed to a maximum of three successive three-year terms but to no more than two successive terms in the same seat.

#### B. Membership

All of the members of the Planning Board shall be residents of Lincoln County.

### §8.2.3. Proceedings

#### A. Meetings and Hearings

All meetings and hearings of the Planning Board shall be held at a regular place and shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and rules of procedure adopted by the Planning Board.

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**Powers and Duties****B. Minutes**

1. The Planning Board shall keep permanent minutes of all meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations and final actions.
2. The minutes of the Planning Board shall be public record.

**C. Quorum**

No final action shall be taken on any issue unless a quorum is present.

**§8.2.4. Powers and Duties**

In execution of the provisions of this UDO, the Planning Board shall have the following power and duties:

**A. General Authority**

1. The Planning Board may exercise additional powers as may be described elsewhere in this UDO and as permitted by North Carolina General Statutes.
2. The Planning Board shall perform related duties as directed by the Board of Commissioners.

**B. Review Authority**

The Planning Board shall make recommendations regarding the following:

1. Text amendments (§9.3);
2. Rezoning (§9.4);
3. Planned development review (§9.5); and
4. Major site plan review (§9.7).

**§8.3. Board of Adjustment****§8.3.1. Establishment**

The Board of Adjustment is established pursuant to G.S. §160D-302.

**§8.3.2. Composition****A. Number and Term**

1. The Board of Adjustment shall consist of five members, each to be appointed for three years. Once appointed, the Board of Commissioners may reappoint a Board of Adjustment member for one successive term.
2. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the Board of Commissioners may appoint certain members for less than three years to the end that the terms of all members shall not expire at the same time.

**B. Membership**

All of the members of the Board of Adjustment shall be residents of Lincoln County.

**C. Alternate Members**

1. The Board of Commissioners may, in its discretion, appoint two alternate members to serve on the Board of Adjustment in the absence of any regular member.
2. Alternate members shall be appointed for three year terms.
3. Each alternate member, while attending any regular or special meeting and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

**§8.3.3. Proceedings****A. Meetings and Hearings**

All meetings and hearings of the Board of Adjustment shall be held at a regular place and shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and rules of procedure adopted by the Board of Adjustment.

**B. Minutes**

1. The Board of Adjustment shall keep permanent minutes of all meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations and final actions.
2. The minutes of the Board of Adjustment shall be public record.

**C. Quorum**

No final action shall be taken on any issue unless a quorum is present.

**§8.3.4. Powers and Duties**

In execution of the provisions of this UDO, the Board of Adjustment shall have the following powers and duties:

**A. General Authority**

The Board of Adjustment may exercise additional powers as may be described elsewhere in this UDO and as permitted by North Carolina General Statutes.

**B. Final Authority**

The Board of Adjustment shall be responsible for final action regarding the following:

1. Variances (§9.18); and
2. Administrative appeals (§9.19).

**§8.4. Historic Preservation Commission****§8.4.1. Establishment**

There is hereby established the Lincoln County Preservation Commission, hereafter referred to as the "Commission."

## Composition

**§8.4.2. Composition****A. Number and Term**

1. The Commission shall consist of five regular members and two alternates. Members are appointed by the Lincoln County Board of Commissioners and the Lincolnton City Council.
2. Members of the Commission shall serve overlapping terms of three years. Initially, however, the following appointments shall be made:
  - (a) Two regular members and one alternate member shall be appointed for a term of one year a piece; and
  - (b) Two regular members and one alternate member shall be appointed for a term of two years a piece; and
  - (c) One regular member shall be appointed to a term of three years.
3. Thereafter, all appointments shall be for a term of three years. A member may be reappointed for up to two consecutive three-year terms. However, if a member serves for six consecutive years or after the expiration of the member's second appointment to the Commission, whichever comes first, a member shall be ineligible for reappointment until one calendar year has thereafter elapsed.
4. Any member of the Commission who misses more than three consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the Commission and shall be replaced or reappointed by the Board of Commissioners. Absence due to sickness, death or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the Commission except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

**B. Membership**

The Commission shall be composed of nine (9) members whose terms of office are set by the Lincoln County of Commissioners. The City of Lincolnton shall have two (2) appointments to the Commissions, which, along with the appointments from the Lincoln County Board of Commissioners, totals nine (9). The majority of the regular members shall have demonstrated special interest, experience or education in history, architecture, archaeology or related fields. No member shall vote on any matter concerning an application for a Certificate of Appropriateness unless that member shall have been present during the hearing and deliberation concerning said application.

**§8.4.3. Proceedings****A. Meetings**

The Commission shall establish a meeting time, and shall meet at least quarterly and more often as it shall determine and require. All meetings of the Committee shall be open to the public and reasonable notice of the time and place thereof shall be given to the public. All meetings shall conform to the North Carolina Open Meetings Law (G.S. § 143-33C).

**B. Rules of Procedure**

The Committee Commission shall adopt and make available to the public rules of procedure for the conduct of its business.

**C. Meeting Minutes**

1. The Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations and actions.
2. The minutes of the Commission shall be a public record.

**D. Annual Report**

An annual report shall be prepared and submitted by the first day of December of each year to the Board of Commissioners. Such report shall include a comprehensive and detailed review of the activities, problems and actions of the Commission, as well as any budget requests and/or recommendations.

**§8.4.4. Powers and Duties**

In execution of the provisions of this UDO, the Commission shall have the following powers and duties:

1. Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;
2. Recommend to the municipal governing board areas to be designated by ordinance as “Historic Districts;” and individual structures, buildings, sites, area, or objects to be designated by ordinance as “Landmarks.”
3. Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks; to hold, manage, preserve, restore and improve the same such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property;
4. Restore, preserve and operate historic properties.
5. Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, of object as a landmark, be revoked or removed for cause.
6. Conduct an educational program with respect to historic properties and districts within its jurisdiction.
7. Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or Federal law;

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8. Enter, solely in performance of its official duties and only at reasonable times, upon private land for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;
9. Prepare and recommend the official adoption of a preservation element as part of the municipality's local government's comprehensive plan.
10. Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part; and
11. Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

#### **§8.4.5. Appeals**

Any appeals of decisions on certificates of appropriateness shall be made to the Superior Court as provided in G.S. 106D-1402.

### **§8.5. Reserved**

### **§8.6. Director**

#### **§8.6.1. Designation**

The Director, or his/her designee, shall administer certain provisions of this UDO as may be required below. If this position should at any time be vacant, then the County Manager shall designate another County official to act as Director until the office is filled.

#### **§8.6.2. Delegation of Authority**

The Director may designate any staff member to represent the Director in any function assigned by this UDO but shall remain responsible for any final action.

#### **§8.6.3. Powers and Duties**

In execution of the provisions of this UDO, the Director shall have the following powers and duties:

##### **A. General Authority**

1. The Director shall serve as the subdivision administrator and be responsible for review of subdivisions.
2. The Director shall serve as the floodplain administrator and be responsible for performing all the duties described in §8.7.
3. The Director shall perform related duties as directed by the County Manager.
4. The Director may exercise additional powers as may be described elsewhere in this UDO and as permitted by North Carolina General Statutes.

**B. Streamside Buffer Variances**

The Director shall report all streamside buffer variances (See §7.5) granted each calendar year to the Environmental Management Commission and Wildlife Resources Commission on or before January 1st of the following year.

**C. Watershed Protection Overlay**

1. The Director shall monitor land use activities within the –WPO district to identify situations that may pose a threat to water quality.
2. The Director shall report all findings to any appropriate public agency or official and request recommendations and assistance.
3. Where the Director finds a threat to water quality and the public health, safety, and welfare, the Director shall institute any appropriate action to remedy the threat.
4. The Director shall issue zoning permits (zoning compliance permits) in the –WPO district. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours.
5. The Director shall keep records of the County’s use of the provision which allows a maximum of 70 percent of the regulated area to be developed at a maximum of 70 percent impervious surface area. Records shall include the total areas of non-critical watershed area, total acres eligible to be developed at this option, and total acres approved for this development option. Individual records which include location, type of use, number of developed acres and stormwater management plans shall be kept for each project.
6. The Director shall keep records of all amendments to this section, and shall provide copies of all amendments upon adoption to the appropriate State agency.
7. The Director shall keep a record of variances to §7.3. This record shall be submitted to the appropriate State agency on an annual basis on or before January 1, and shall provide a description of each project receiving a variance and the reasons for granting the variance.
8. The Director shall monitor land use activities within all the -WPO districts to identify situations that may pose a threat to water quality. Where the Director or Board of Commissioners finds a threat to water quality and the public health, safety and welfare, the Board of Commissioners shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation as herein authorized.

**D. Review Authority**

The Director shall make recommendations regarding the following:

1. Text amendments (§9.3);
2. Rezoning (§9.4);
3. Planned development review (§9.5);
4. Preliminary plat review (§9.6);
5. Major site plan review (§9.7);
6. Special use review (§9.10);

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7. Special use review (§9.11);
8. Variances (§9.18); and
9. Zoning vested rights (§9.20).

**E. Final Authority**

The Director shall be responsible for final action regarding the following:

1. Minor plat review (§9.6);
2. Family plat review (§9.6);
3. Final plat review (§9.6);
4. Minor site plan review (§9.7);
5. Traffic impact analyses (§9.8);
6. Zoning permits (§9.9);
7. Temporary use permits (§9.13);
8. Sign permits (§9.14);
9. Common signage plans (§9.15);
10. Floodplain development permits (§9.16); and
11. Written interpretations (§9.17).

**§8.7. Floodplain Administrator****§8.7.1. Designation**

The Director as designated in §8.6, shall serve as the floodplain administrator for floodplain development permits of §9.16 and the floodplain regulations of §7.4, and shall administer certain provisions of this UDO as may be required below.

**§8.7.2. Powers and Duties****A. General**

The Floodplain Administrator shall perform the following duties:

1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this section and §7.4 have been satisfied.
2. Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.



5. Prevent encroachments into floodways and non-encroachment areas prior to compliance with the certification and flood hazard reduction provisions of §7.4.2.
6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with §9.16.5.
7. Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been flood proofed, in accordance with the provisions of §9.16.5.
8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of §9.16.5.
9. When flood proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of §9.16.4 and §9.16.5.
10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
11. When Base Flood Elevation (BFE) data has not been provided in accordance with §9.16.2, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to §9.16.9.B.2 in order to administer the provisions of this section.
12. When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with §9.16.2, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this section.
13. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.
14. Permanently maintain all records that pertain to the administration of this section and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises

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within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this section, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
17. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
18. Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
19. Follow through with corrective procedures of §9.16.9.
20. Review, provide input, and make recommendations for variance requests.
21. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with §9.16.2, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
22. Coordinate revisions to FIS reports and firms, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

**B. Final Authority**

The Floodplain Administrator shall be responsible for final action regarding the following:

1. Floodplain development permits (§9.16).

## **§8.8. Technical Review Committee**

### **§8.8.1. Establishment and Composition**

The Technical Review Committee is hereby established and composed of representatives of County and State agencies with development review responsibilities.

**§8.8.2. Meetings**

Meetings shall be held monthly or as determined necessary by the Director.

**§8.8.3. Powers and Duties**

In execution of the provisions of this section, the Technical Review Committee shall have the following powers and duties:

**A. Review Authority**

The Technical Review Committee shall make recommendations regarding the following:

1. Planned development review (§9.5);
2. Final plat review (§9.6);
3. Major site plan review (§9.7); and
4. Other reviews as determined necessary and at the discretion of the Director.