



Regular Council - Minutes Monday, January 4, 2021

COUNCIL PRESENT:

Mayor Mulhollem
Mayor Pro Tem Castleberry
Council Member Bruton (Remotely)
Council Member Jackson
Council Member Purvis
Council Member Wilson

STAFF PRESENT:

Mike Gordon, Town Administrator
Marcus Burrell, Town Attorney
Kim P. Batten, Finance Officer/Town Clerk
Julie Maybee, Town Planner

COUNCIL ABSENT:

GUEST PRESENT:

1. WELCOME/CALL TO ORDER:

a) Invocation

Mayor Mulhollem called the meeting to order at 6:31 p.m. in the Jeffrey D. Barnes Council Chambers located at 14094 Buffalo Road, Archer Lodge, NC and declared a quorum present. Council Member Jackson offered the invocation.

b) Pledge of Allegiance

Mayor Mulhollem led in the Pledge of Allegiance to the US Flag.

2. APPROVAL OF AGENDA:

a) No additions or changes noted.

Moved by: Council Member Wilson
Seconded by: Council Member Jackson

Approved Agenda.

CARRIED UNANIMOUSLY

3. OPEN FORUM/PUBLIC COMMENTS:

(Maximum of 30 minutes allowed, 3 minutes per person)

a) No Public Comments.

4. CONSENT AGENDA:

a) Approval of Minutes:

**16 Nov 2020 Town Council and Planning Board Joint Work
Session Minutes**

07 Dec 2020 Regular Council Meeting Minutes

b) **Resolution# AL2021-01-04 Adopting the Updated Cape Fear Regional Hazard Mitigation Plan**

Adopted Resolution# AL2021-01-04 appears as follows:

Resolution #AL2021-01-04 TOWN OF ARCHER LODGE RESOLUTION ADOPTING THE UPDATED CAPE FEAR REGIONAL HAZARD MITIGATION PLAN WHEREAS, the citizens, businesses and properties in the Town of Archer Lodge, NC are subject to the effects of natural hazards that pose threats to lives and cause damage to businesses and properties, and with the knowledge and experience that certain areas of the town/county are particularly vulnerable to drought, extreme heat, hailstorm, hurricane and tropical storm, lightning, thunderstorm wind/high wind, tornado, winter storm and freeze, flood, hazardous material incident, and wildfire; and WHEREAS, the Town of Archer Lodge, NC desires to seek ways to mitigate the impact of identified hazard risks; and WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and WHEREAS, the Legislature of the State of North Carolina has enacted General Statute Section 166A-19.41 (<i>State emergency assistance funds</i>) which provides that for a state of emergency declared pursuant to G.S. 166A-19.20(a) after the deadline established by the Federal Emergency Management Agency pursuant to the Disaster Mitigation Act of 2002, P.L. 106-390, the eligible entity shall have a hazard mitigation plan approved pursuant to the Stafford Act; and WHEREAS, Section 322 of the Federal Disaster Mitigation Act of 2000 states that local governments must develop an All-Hazards Mitigation Plan in order to be eligible to receive future Hazard Mitigation Grant Program Funds and other disaster-related assistance funding and that said Plan must be updated and adopted within a five year cycle; and WHEREAS, the Town of Archer Lodge, NC has performed a comprehensive review and evaluation of each section of the previously approved Cape Fear Regional Hazard Mitigation Plan, adopted by Resolution #AL2016-03-14b on March 14, 2016, and has updated the said plan, as required under regulations at 44 CFR Part 201 and according to guidance issued by the Federal Emergency Management Agency and the North Carolina Division of Emergency Management. WHEREAS, it is the intent of the Town Council of the Town of Archer Lodge, NC to fulfill this obligation in order that the Town of Archer Lodge, NC and/or Johnston County, NC will be eligible for federal and state assistance in the event that a state of disaster is declared for a hazard event affecting the Town of Archer Lodge, NC and/or Johnston County, NC. NOW, THEREFORE, be it resolved that Town Council of the Town of Archer Lodge, NC hereby: Adopts the updated Cape Fear Regional Hazard Mitigation Plan.	Resolution #AL2021-01-04 - Inform all concerned parties of this action. - Cooperate with Federal, State and local agencies and private firms which undertake to study, survey, map and identify floodplain areas, and cooperate with neighboring communities with respect to management of adjoining floodplain areas in order to prevent exacerbation of existing hazard impacts. - Appoints the Town Administrator or designee of the Town of Archer of Archer Lodge, NC to cooperate/coordinate with the Emergency Services Director of Johnston County, NC to assure that the Hazard Mitigation Plan, on file with the Town Clerk of Archer Lodge, NC, is reviewed annually and every five years as specified in the Plan to assure that the Plan is in compliance with all State and Federal regulations and that any needed revisions or amendments to the Plan are developed and presented to the Archer Lodge Town Council and Johnston County Board of Commissioners for consideration. - Agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan. DULY ADOPTED ON THIS 4th DAY OF JANUARY 2021, WHILE IN REGULAR SESSION.  (SEAL) Matthew B. Mulhollem, Mayor ATTEST:  (SEAL) Kim P. Batten, Town Clerk 
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Moved by: Council Member Wilson
Seconded by: Council Member Purvis
Approved Consent Agenda.

CARRIED UNANIMOUSLY

5. DISCUSSION AND POSSIBLE ACTION ITEMS:

- a) **Discussion and Consideration of Setting a Public Hearing at the February 1, 2021 Regular Town Council Meeting for the Text Amendments to the *Code of Ordinances, Archer Lodge, NC*, Chapter 30, Zoning and Subdivisions, Article II. Zoning, Division 3. Overlaying Zoning Districts, Section 30-131. - Water Supply Watershed Protection District (WSW)**

Ms. Maybee shared information from her staff report which appears below:

Staff Report Page 1  TOWN OF ARCHER LODGE 14094 Buffalo Road Archer Lodge, NC 27527 Main: 919-359-9727 Fax: 919-359-3333 Mayor: Matthew B. Mulhollem Council Members: Clyde B. Castleberry Mayor Pro Tem Teresa M. Bruton J. Mark Jackson James (Jim) Purvis, III Mark B. Wilson	
To:	Town Council
From:	Julie Maybee, Town Planner
Date:	January 4, 2021
Cc:	Town Administrator, Finance Officer/Town Clerk, Deputy Clerk, Town Attorney, Brough Law Firm, CodeWright Planners
Re:	Agenda Item 5.a. – Discussion and Consideration of Setting a Public Hearing at the February 1, 2021 Regular Town Council Meeting for the Text Amendments to the Code of Ordinances, Archer Lodge, NC, Chapter 30, Zoning and Subdivisions, Article II. Zoning, Division 3, Overlaying Zoning Districts, Section 30-131. – Water Supply Watershed Protection District (WSW).
Summary: The Town is required to adopt ordinances limiting development in drinking water watersheds to protect the drinking water supply of downstream communities. These ordinances must be approved by the State. An updated version of the Town's water supply watershed overlay district is attached. The basis of this regulation is that streams and rivers will naturally clean themselves of certain pollutants after about ten miles of flow. Thus, local governments are required to control certain types of polluting land uses and discharges within defined watershed upstream from drinking water intakes. The regulations become stricter within one mile of drinking water intakes. History: By the 1980s exploding growth in North Carolina caused conflicts between local governments about developments in drinking water watersheds. At the same time, the U.S. EPA, NC DENR and others were beginning to regulate dispersed runoff caused by cities and towns,	

typically from streets. As in the case of other environmental concerns, eventually Congress and the General Assembly adopted statutes regulating development and discharges to water bodies to protect public health. Both the State of North Carolina¹ and the U.S. Government² require that municipalities adopt ordinances to protect downstream drinking water sources. Since the early 1990's the State has administered the requirements for the U.S. EPA. The N.C. Environmental Management Commission (EMC) has adopted very specific requirements found in the N.C. Administrative Code. The Town's water supply watershed ordinance must be approved by the EMC.

In 2013, the Town adopted the 2010 version of the Johnston County Water Supply Watershed (WSW) Ordinance. EMC has no record of that ordinance being sent by the Town for review or approval.

NC Environmental Management Commission (EMC) amended the NC Administrative Code (NCAC) in 2019 which required counties and towns to amend their Water Supply Water Ordinance (WSWO) by 2020.

The Town's Special Counsel and Town Planner have been working with the State since January/February 2020. Draft provisions, complying with 2019 amendments, were submitted for State review. Said provisions were tentatively approved by N.C. Dept. of Environmental Quality staff in early November 2020.

Subsequently, at a joint meeting on November 16, 2020, the draft amendments were presented to the Town Council and Planning Board for consideration. At the meeting, the Town Attorney suggested a consistency revision requiring the Town Council to approve special use permits in Water Supply Watershed Protection Overlay District (WSWOD). This revision has been incorporated in the proposed text.

On January 20, 2021, the Planning Board will deliberate and tentatively make findings of fact and a recommendation on the proposed revisions.

Explanation of the Attached Amendments: The state defines the watersheds. Within some of the Neuse River watershed in Archer Lodge, the Town is required to prohibit certain polluting land uses (for example, asphalt plants and chemical works). The Town is also required to limit the amount of land that can be covered by buildings and concrete. This is called "built upon area". The idea is that reducing built upon area will reduce the flow of pollutants into the River because natural areas capture more sediment, nitrogen, motor oil leaked by vehicles and so on. The State requires that the Town offer cluster residential development. Property owners are permitted to use swap built upon areas between parcels upon approval of a special use permit by the Town Council. Planted buffers next to stream and ponds are required. In some cases, development can be built at a higher built upon area, if stormwater is first captured and treated in State approved

¹ N.C. Gen. Stat. Chapter 143, Art. 21 Water and Air Resources, Section 143-211 *et seq.*
² U.S. Clean Water Act

"engineered control structures" such as ponds.

Requested Town Council Action:

Staff respectfully requests that the Town Council:

- a) Consider the proposed amendments, as referenced herein; and
- b) Set a public hearing at the February 1, 2021 Regular Town Council Meeting for the Text Amendments to the Code of Ordinances, Archer Lodge, NC, Chapter 30, Zoning and Subdivisions, Article II. Zoning, Division 3, Overlaying Zoning Districts, Section 30-131. – Water Supply Watershed Protection District (WSW).

Attachments: Text Amendments to the Code of Ordinances, Archer Lodge, NC, Chapter 30, Zoning and Subdivisions, Article II. Zoning, Division 3, Overlaying Zoning Districts, Section 30-131. – Water Supply Watershed Protection District (WSW).

Note: As proposed, Section 30-131 will be renamed "Water Supply Watershed Protection Overlay District (WSWOD).

The DRAFT version of the Water Supply Watershed Protection Overlay District (WSWOD) provisions appears as follows:

DRAFT Code of Ordinances, Town of Archer Lodge, NC, Chapter 30, Zoning and Subdivisions, Article II. Zoning, Division 3. Overlaying Zoning Districts, Section 30-131. - Water Supply Watershed Protection Overlay District (WSWOD) (a) <i>Authority.</i> The General Assembly has, in G.S. sections 143-214.5, 160A-174, 160A-371, 160D-801, 160D-702 and 160A-381, delegated the responsibility and directed the Town to establish water supply watershed protection programs, to regulate land use and development within water supply watersheds and to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. (b) <i>Intent.</i> The Water Supply Watershed Protection Overlay District (WSWOD) is to provide, in designated watershed areas, a higher level of control from activities and situations that could degrade the quality of the water entering the Neuse River, as identified in the state watershed protection management plan. (c) <i>Applicability.</i> The provisions of this article shall apply within the area designated as a public water supply watershed by the N.C. Environmental Commission and are defined and established on the map entitled "Water Supply Watershed Protection Overlay District of Archer Lodge, North Carolina," on the official zoning map of the Town. Land use and development within this district that requires an Erosion and Sedimentation Control Permit must comply with all the requirements of this article and the underlying zoning district.¹ (d) <i>Exceptions to applicability.</i> The watershed protection requirements of this section shall not apply to: (1) Development established prior to December 4, 2009, the first date of adoption of this ordinance. (2) New or existing single-family detached dwelling unit . (3) Development that does not require an Erosion and Sedimentation Control Permit. (4) Existing development, unless it is expanded or replaced, in which case the rules at sub-section (f) below apply. In addition, the following exceptions also apply: (5) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this Ordinance ¹ 15A NCAC 02B.0624(2) (9/1/2019) 1	amend, modify, or restrict any provisions of the Code of Ordinances of the Town; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the Town at the time of the adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance or to conflict with any of its provisions. (6) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control. (7) <i>Non-conforming lots.</i> If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this ordinance if it is developed for single-family residential purposes. If a non-conforming lot of record is contiguous to another lot owned by the same party, the lots shall be combined to make a conforming lot or one that is more conforming than each lot individually.² Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.³ (e) <i>Definitions.</i> The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Where these defined terms conflict with or duplicate other definitions in this ordinance, these definitions control only in the use application of this section and are not to be used in using , interpreting or applying other sections of this ordinance. <i>Best management practices</i> means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals. <i>Buffer</i> means an area of natural or planted vegetation through which stormwater runoff flows in a diffused manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impoundments and from the bank of each side of streams or rivers. <i>Built-upon area</i>³ (<i>impervious surface</i>) means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the ² 15A NCAC 02B.0622(1)(3) 3/1/2019. This rule should be applied to all nonconforming lots in the revised subdivision ordinance. AB ³ GS § 143-214.7 (b2) 2
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American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; a trail (a linear corridor on land or water protected from motor vehicles, providing public access for recreation or transportation⁴) that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle..

Cluster Development. Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments. For the purpose of this ordinance, planned unit developments and mixed use development are considered as cluster development.

Commission means the N.C. Environmental Management Commission (EMC).⁵

Critical area. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile. At the adoption of the ordinance from which this article is derived, there are no known critical areas in the planning area of the Town.

*Curb Outlet System*⁶ means curb and gutter with breaks or other outlets used to convey stormwater runoff to vegetated conveyances or other vegetated areas.”

*Development*⁷ means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil.

*Dispersed Flow*⁸ means uniform shallow flow that is conveyed to a vegetated filter strip, another vegetated area, or stormwater control measure (SCM). The purpose of dispersed flow is to remove pollutants through infiltration and settling, as well as to reduce erosion prior to stormwater reaching surface waters.

⁴ GS §143B-94 (6)

⁵ 15A NCAC 02h.1002((7)

⁶ 15A NCAC 02H.1002

⁷ GS § 143-214.7 (a1)(1)

⁸ 15A NCAC 02H.1002 (13)

*Erosion and Sedimentation Control Plan*⁹ means any plan submitted to the Division of Energy, Mineral and Land Resources or a delegated authority in accordance with G.S. section 113A-57.

*Existing Development*¹⁰. Those projects that are built or those projects that have established a vested right under N.C. law as of Dec. 4, 2009.

Existing Lot (Lot of Record). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Johnston County Register of Deeds prior to the adoption of this ordinance (Dec. 4, 2009) , or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

*Infiltration*¹¹ means the movement of storm water runoff into the soil’s pore spaces.

*Intermittent Stream*¹² a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the perched of seasonal high water table. The flow may be supplemented by stormwater runoff.

*Major watershed variance*¹³ means a variance that is not a “minor watershed variance” as it is defined below.

*Minor watershed variance*¹⁴ means a variance from the minimum standards of this ordinance that results in the relaxation of up to ten per cent of any buffer (vegetated setback), or density requirement applicable to low density development, or the relaxation of up to five per cent of any buffer or density applicable to high density development¹⁵ . For variances to a buffer, the per cent variation shall be calculated using the footprint of the built upon area proposed to encroach within the vegetated setback divided by the total area of the vegetated setback within the project.¹⁶ When the Town’s ordinances are more stringent than the State’s minimum watershed protection requirements, a variance to the Town’s ordinance is a minor watershed variance provided that the result of the variance is not less stringent than the State’s Rules.¹⁷

⁹ Id at (16)

¹⁰ 15A NCAC 02H.1002

¹¹ Id at (20).

¹² 15A NCAC 02b.0610(24)

¹³ 15A NCAC 02B.0621 (14)

¹⁴ 15A NCAC 02B.0621 (16)

¹⁵ Under GS Chap 160D and 160A Art. 19, boards of adjustment do not have the power to alter densities and lot sizes. “Density” in this case means per cent of impervious coverage?

¹⁶ Move last sentence to variance section.

¹⁷ 15A NCAC 02B.0623 (5)

*Nonconforming lot of record*¹⁸ means a lot described by a plat or deed that was recorded prior to Dec. 4, 2009 that does not meet the minimum lot size or other development requirements of this ordinance.

*Normal Water Level or Pool Elevation*¹⁹ means the water level within a pond, lake or other impoundment natural or man-made (including beaver ponds). At the elevation of the outlet structure or spillway(i.e., the elevation of the permanent pool). The normal water level is typically identified by the lowest edge of terrestrial vegetation.

*Perennial Stream*²⁰ means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the perched or seasonal high water table for most of the year. Groundwater is the primary source of water for a perennial stream. But it also carries stormwater.

Protected area means the area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the intake located directly in the stream or river or to the ridge line of the watershed.

*Redevelopment*²¹ Any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development.

Residential Development. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

Single Family Residential. Any development where: 1) no building contains more than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit.

Stormwater Control Measure (SCM) is also known as *Best Management Practice (BMP)*²² means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post filtering discharge, reuse of stormwater or a combination thereof.

Street (Road). A right-of-way for vehicular traffic which affords the principal means of

¹⁸ 15A NCAC 02b.0621 (17)
¹⁹ 15A NCAC 02B. 0610 (28)
²⁰ 15A NCAC 02B.0610 (30)
²¹ G.S. § 143-214.7 (a1)(2)
²² 15A NCAC 02B.0610 (36) and 15A NCAC 02H. 1002

access to abutting properties.

Structure. Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Qualified Individual. A person certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) course offered by the N.C. Div. of Water Resources at N.C. State University.

*Ten (10) Year Storm or Ten-year Storm Intensity*²³. The maximum rate of rainfall of a duration equivalent to the time of concentration expected, on the average, once in every ten years. Ten-year storm intensities are estimated by the National Oceanic and Atmospheric Administration Precipitation Frequency Data Server (PFDS), which is incorporated herein by reference, including subsequent amendments and additions. It may be accessed at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

Toxic Substance. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

*Vegetated Filter Strip*²⁴ A vegetated conveyance that (i) is graded with a uniform transverse slope of 8% or less; (ii) the pH, compaction and other attributes of the first 12 inches of soil shall be adjusted as necessary to promote the establishment and growth of plants.; and (iii) the vegetated conveyance is planted with non-clumping, deep-rooted grass sod; and (iv) has soils that are stabilized with temporary means such as straw or matting until the permanent vegetation has taken root of the runoff is directed elsewhere until vegetation is established.

*Vegetated Conveyance*²⁵ means a permanent designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

*Vegetated Setback*²⁶ (*Buffer*) means an area of natural or established vegetation adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.

Water Dependent Structure. Any structure for which the use requires access to or proximity

²³ 15A NCAC 02H.1002 (50)
²⁴ 15A NCAC 02H.1059 (10)
²⁵ 15A NCAC 02H.1002 (52)
²⁶ 15A NCAC 02H.1002 (51)

to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Watershed. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

Watershed Administrator. The Zoning Administrator of the Town who is the official responsible for administration and enforcement of this ordinance.

(f) *Permits.*

(1) *Zoning compliance permit / Watershed protection permit.*²⁷

- a. Except where either (i) a single family residence is constructed on a lot deeded prior to Dec. 4, 2009, or (ii) An Erosion and Sedimentation Control permit is not required, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any zoning compliance permit²⁸ be issued nor shall any change in the use of any building or land be made until a the information required by this Section has been received by the Zoning Administrator and a watershed protection permit has been issued. No watershed protection permit shall be issued except in conformity with the provisions of this ordinance. This permit shall be filed with the Town and shall expire at the end of 24²⁹ months if not used, or if a building permit is not obtained.
- b. Watershed protection permit applications shall be filed with the Zoning Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Town.
- c. Prior to issuing a Watershed Protection Permit, the Zoning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.³⁰

(2) *Building permit required.* Except where provided elsewhere in this article, no building permit required under the state building code shall be issued for any activity for which a watershed permit is required until such permit has been issued.³¹

²⁷ This will need to be revised to follow Johnston County's procedure. Depends on the Interlocal Agreement.

²⁸ Note to DEQ: Town does not issue building permits. Johnston County issues building permits. Zoning compliance permits are required before building permits can be issued.

²⁹ NC Chap 160D requires 24 months.

³⁰ Model Ordinance Section 308

³¹ Model Ordinance Section 309. Of course, Town does not issue building permits.

(3) *Watershed occupancy permit.*

- a. Prior to the occupancy or use of a building erected, altered or moved and/or prior to the change of use of any building or land, the Zoning Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this article have been met.
 - b. If the watershed protection occupancy permit is denied, the Zoning Administrator shall notify the applicant in writing stating the reasons for denial.
- (g) *Occupied lots.* This category consists of lots occupied for residential purposes at the time of the adoption of the ordinance from which this article is derived. These lots may continue to be used, provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after Dec. 4, 2009, and such lots individually or together have less area than the minimum requirements for residential purposes specified in this article, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity. The undeveloped lot may not be developed unless and until it complies with this ordinance.
- (h) *Industrial use of land.* This category consists of existing industrial uses and/or the storage of hazardous or toxic materials where a spill containment plan is not implemented and where such use of the land is not permitted to be established in the watershed area. Such existing uses may be continued except as provided for in subsection (i)(1) a. 4 of this section.
- (i) *Permitted uses.*
- (1) The following uses are permitted as principal uses in the watershed protection overlay district provided such uses are also permitted in the underlying zoning district and providing that the requirements stated in this section and this zoning and subdivision ordinances.
 - a. *Protected area.*
 1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
 2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101.0209).
 3. Residential development as permitted in the underlying zoning district provided that it meets the standards of the WSWOD.
 4. Nonresidential development as permitted in the underlying zoning district provided that it meets the standards of the WSWOD.
 - b. *Density and Built-upon (impervious) limits in the protected area.*

1. Where the maximum allowed built-upon area conflicts with another ordinance or standard, the stricter standard, or lower maximum allowed built-upon area applies. For example, where either (i) the Johnston County Stormwater Ordinance as adopted by reference by the Town, or (ii) Zoning Ordinance section 30-352 apply, then lower built-upon area requirements apply.
2. Single family residential uses shall develop at a maximum of two (2) dwelling units per acre (2 du/ac) or 20,000 square feet per lot, excluding street rights-of-way. In the alternative, the maximum built upon area shall be 24%.
3. All other residential and non-residential development shall not exceed twenty-four percent (24%) built-upon area. For projects without a curb and gutter street system, development shall not exceed thirty-six (36%) percent built-upon area.
4. Cluster Development³² is allowed on a project-by-project basis if all of the following conditions are met:
 - a. Overall density shall meet the requirements of 1 or 2 above; and
 - b. Buffers (vegetated setbacks) shall meet the requirements of (i)(1) c below; and
 - c. Built-upon areas are designed and located to minimize stormwater runoff impacts to receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas and maximize the flow length through vegetated areas; and
 - d. Areas of concentrated development shall be located in upland areas and away from surface waters and drainage ways. In determining whether these criteria have been met the approving body shall take into account site-specific factors such as topography, site layout and the protection of water quality; and
 - e. The remainder of the tract shall remain in a vegetated or natural state; and
 - f. The area in a vegetated state shall be conveyed to a home owner's association, the Town for preservation as a park or greenway, a conservation organization, or placed in a permanent conservation or farmland preservation easement; and

³² 15A NCAC 02B.0824 (8) [June 2020]

- g. A maintenance agreement for the vegetated or natural area shall be recorded with the Johnston County Register of Deeds and incorporated into any restrictive covenants for the development; and
- h. Vegetated swales and/or "curb outlet systems" as described in subsection (j) will be provided.
5. Density Averaging. An applicant may average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:
 - a. The properties are within the Archer Lodge water supply watershed.
 - b. Overall project density meets applicable density or stormwater control requirements of this section.
 - c. Vegetated setbacks on both properties meet the minimum requirements in section (j) below.
 - d. Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
 - e. Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainage ways.
 - f. The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to the Town or County as a park or greenway, or placed under a permanent conservation or farmland preservation. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.
 - g. Development permitted under density averaging shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.
 - h. A special use permit shall be obtained from the Town Council to ensure that both properties considered together meet the standards of the watershed ordinance and that potential owners have record of how the watershed regulations were applied to the properties.

6. Low-Density Option. Sub-sections 1, 2 or 3 are collectively known as the “low density option”. No “high density option” is permitted.

7. *Calculation of Density.*

- a. Project Density is calculated as the Total Built Upon Area divided by the Total Project Area;
- b. A project with “existing development” may calculate Project Density as in 6.a. or as:

$$\frac{(\text{Total Built-Up Area} - \text{Existing Built-Up Area})}{(\text{Total Project Area} - \text{Existing Built-Up Area})}^{33}$$

- c. When there is a net increase of built-upon area, only the area of net increase is subject to the Water Supply Watershed Overlay District standards.
- d. Where existing development is replaced with a new built-upon area, and there is a net increase of built-upon area, only the area of net increase is subject to the Water Supply Watershed Overlay Standards.

(j) *Vegetated setback (Landscaped buffer area) required*³⁴.

(1) *Vegetated setback. (buffer)*

- a. Vegetated setbacks or buffers are required along all perennial streams and waterbodies as indicated on either the most recent versions of the U.S. Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which are incorporated herein by reference and are available online at no cost at <http://www.usgs.gov/pubprod>; or another map developed by the Town, County or N.C. DEQ and approved by the Environmental Management Commission.
- b. Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations. “Qualified Individual” is defined in section (e) definitions above.
- c. *Width of Vegetated Setback/ Buffers:* The following minimum widths apply from both banks or sides of any surface waters, including perennial streams, lakes, ponds, reservoirs measured horizontally from the normal pool elevation of impoundments or the top of bank of streams: (i) Thirty (30) feet for all Low

³³ This is supposed to be an equation. I’m trying to get it to come out right.

³⁴ 15A NCAC 02B.0624 (11) Vegetated Setbacks

Density Option development; (ii) Ten (10) feet OR equivalent as determined under 15A NCAC 02B.0622 for agricultural activities.

(2) *Uses of the Vegetated Setback/Buffer:* The Vegetated Setbacks may be cleared or graded but shall be replanted and maintained in grass or other vegetation. No new built-upon area shall be allowed except for the following uses where it is not practical to locate them elsewhere:

- a. Publicly funded linear projects such as roads, green ways and sidewalks;
- b. Water dependent structures such as docks;
- c. Minimal footprint uses such as poles, signs, utility appurtenances and security lights. Built-upon area associated with these uses shall be minimized and the channelization of run-off shall be avoided.
- d. Artificial stream bank and shoreline stabilization is not subject to the requirements of this sub-section.
- e. Divisions of property into lots that are exempt from the Town’s subdivision ordinance shall implement the requirements of this sub-section to the maximum extent practicable considering site-specific factors including technical and cost considerations as well as water-quality protection.

(k) *Additional requirements for Low Density Projects.* Low-density projects shall comply with all of the following:

(1) *Vegetated Conveyances.* Stormwater runoff from any development shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether this criteria has been met the Zoning Administrator shall take into account site specific factors such as topography and site layout as well as water-quality protection. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances meeting the following criteria satisfy the requirements of this sub-section:

- a. Side slopes shall be no steeper than 3:1 (Horizontal to vertical) unless it is demonstrated to the Zoning Administrator that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and
- b. The conveyance is designed so that it does not erode during peak flow from the 10-year storm as demonstrated by engineering calculations submitted with the application for a Watershed Permit by a NC Registered Professional Engineer.

(2) *Curb Outlet Systems.* Instead of vegetated conveyances, low density projects have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. The requirements for curb outlet systems are as follows:

- a. The curb outlets are located so that the swale or vegetated area can carry the peak flow from the 10-year storm at a non-erosive velocity.
 - b. The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery to surface waters shall be provided.
 - c. The swale's cross-section shall be trapezoidal with a minimum bottom width of two feet.
 - d. The side slope of the swale or vegetated area shall be no steeper than 3:1 (horizontal: vertical).
 - e. Low density developments may use treatment swales designed in accordance with 15A N.C. Administrative Code 02H.1061.
- (l) *Establishment of the watershed review board.* The Board of Adjustment shall serve as the watershed review board as it is required in 15A N.C. Administrative Code 02B.0623 (5) (March 1, 2019).
- (m) *Variances.* The Board of Adjustment shall hear and decide on petitions, requesting a variance from the standards of the water supply watershed protection overlay district following the procedures and standards of Chapter 2, Divisions 2, 3 and 4 with the following exceptions:
- (1) Instead of the standards of section 2-47 (e) the Board of Adjustment shall use the following standards³⁵:
 - a. There are difficulties or hardships that prevent compliance with this section (30-131); and
 - b. The variance is in accordance with the general purposes and intent of Section 30-131; and
 - c. If the variance is granted, the proposed development / project will ensure equal or better protection of the waters of the State than the requirements of this section, 30-131 and that the stormwater controls will function in perpetuity.
 - (2) *Procedural changes to Chapter 2, Division 4, Quasi-Judicial Hearing Procedures.* In addition to the requirements of Chapter 2, Division 4, the following procedures will be followed:
 - a. *Minor Watershed Variances.* A thirty-day comment period shall run following the submission of a completed variance application and before the Board of Adjustment hears the application. The Zoning Administrator shall notify all other

³⁵ 15A NCAC 02B.0623 (5)

- local governments having jurisdiction in the watershed and all entities using the water supply for consumption.³⁶
- b. *Major Watershed Variances.* A decision by the Board of Adjustment to approve a major watershed variance shall be preliminary only. The Zoning Administrator shall within 30 days of the board's decision, forward a record of the hearing, findings, and conclusions of law to the state environmental management commission for review and final decision. The preliminary record of the hearing shall include:
 - 1. The variance application;
 - 2. The hearing notices;
 - 3. The evidence presented;
 - 4. Motions, offers of proof, objections to evidence, and rulings on them;
 - 5. Proposed findings and expectations;
 - 6. The proposed decision, including all conditions proposed to be added to the permit.
- If the Environmental Management Commission approves the decision of the Board of Adjustment or approves the decision with conditions, then the Commission shall prepare decision that authorizes the Board of Adjustment to issue a final decision including any conditions added by the Commission.
- If the Environmental Management Commission denies the major watershed variance, the Commission shall send the decision to the Board of Adjustment for final action in accord with the Commission's order.
- (n) *Additional Duties of the Zoning Administrator*³⁷: The Zoning Administrator shall maintain the following records and furnish a copy to the Water Resources Division upon request:
- (1) A copy of the records of all variance applications heard by the Board of Adjustment, including the record of decision; and
 - (2) A description of all projects for which the Board of Adjustment has granted a variance; and
 - (3) Records of inspections of Stormwater Control Measures.

³⁶ This means just the Neuse River Basin watershed in which Archer Lodge is located, which includes Clayton, Johnston County and Wilson's Mills, Benson, Four Oaks, Kenty, Micro, Pine Level, Princeton, Selma, Smithfield.

³⁷ In the UDO, combine with other duties of the Zoning Administrator.

(o) OPERATION and MAINTENANCE of Stormwater Control Measures (SCM)

When engineered stormwater control measures are required, they shall be operated and maintained according to the provisions of 15A NCAC 02B.0623 (7), as amended, which is incorporated herein by reference as if fully set out herein.

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Discussion followed. Mayor Mulhollem called for a motion.

Moved by: Council Member Jackson

Seconded by: Council Member Purvis

Set a Public Hearing for Monday, February 1, 2021 at the Regular Town Council meeting on the Text Amendments to the Code of Ordinances, Archer Lodge, NC, Chapter 30, Article II, Division 3, Section 30-131. - Water Supply Watershed Protection District (WSW).

CARRIED UNANIMOUSLY

b) Discussion and Consideration of Setting a Public Hearing at the February 1, 2021 Regular Town Council Meeting for the Text Amendments to the *Code of Ordinances, Archer Lodge, NC, Chapter 14. Flood Damage Prevention*

Ms. Maybee shared information from her staff report which appears below:



TOWN OF ARCHER LODGE
14094 Buffalo Road
Archer Lodge, NC 27527
Main: 919-359-9727
Fax: 919-359-3333

Mayor:
Matthew B. Mulhollem

Council Members:
Clyde B. Castleberry
Mayor Pro Tem
Teresa M. Bruton
J. Mark Jackson
James (Jim) Furvis, III
Mark B. Wilson

To: Town Council
From: Julie Maybee, Town Planner
Date: January 4, 2021
Cc: Town Administrator, Finance Officer/Town Clerk, Deputy Clerk, Town Attorney, Brough Law Firm, CodeWright Planners
Re: Agenda Item 5.b. – Discussion and Consideration of Setting a Public Hearing at the February 1, 2021 Regular Town Council Meeting for the Text Amendments (Amend Chapter in its Entirety)

Summary: Recent changes in North Carolina General Statutes have necessitated amendments to the Code of Ordinances, Archer Lodge, NC, Chapter 14, Flood Damage Prevention.

Milton Carpenter, CFM, NFIP Planner, NC Department of Public Safety, Risk Management/EM has reviewed the Town of Archer Lodge Ordinance #AL2018-06-1; and recommended revisions. Said ordinance **section revisions are shown in yellow highlight, and text changes are in blue font.**

On January 20, 2021, the Planning Board will deliberate and tentatively make findings of fact and forward recommendation on the proposed revisions with Council's concurrence.

Background Information: The Town Council Approved Ordinance# AL2018-06-1 on June 14, 2018. It amended the Flood Damage Prevention Ordinance enacted by Council on November 8, 2010.

Ordinance provisions must be approved and enforced in accordance with applicable guidelines for the Town to be eligible to participate in the National Flood Insurance Program (NFIP). NFIP provides

flood insurance to property owners, renters and businesses; and having this coverage helps them recover faster when floodwaters recede. Flood insurance is available to anyone living in one of the 23,000 participating NFIP communities.

The Town of Archer Lodge is a participating NFIP community.

Requested Town Council Action:

Staff respectfully requests that the Town Council:

- a) Consider the proposed amendments, as referenced herein; and
- b) Set a public hearing at the February 1, 2021 Regular Town Council Meeting for the Text Amendments to the Code of Ordinances, Archer Lodge, NC, Chapter 14, Flood Damage Prevention

Attachments: Text Amendments to the Code of Ordinances, Archer Lodge, NC, Chapter 14, Flood Damage Prevention.

Note: Municode format changes from the adopted Ordinance# AL2018-06-1 are shown **in green font and gray highlight. Recommended section revisions are shown in yellow highlight and text changes are in blue font.**

The DRAFT version of the Flood Damage Prevention Ordinance with colored revisions appears as follows:

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SECTION 14-3.	STATEMENT OF PURPOSE 3
SECTION 14-4.	OBJECTIVES 3
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FLOOD DAMAGE PREVENTION ORDINANCE

Non-Coastal Regular Phase

ARTICLE 1 - STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

Sec. 14-1. - Statutory authorization Authority.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; ~~Parts 3, 5, and 6 of Article 6~~ of Chapter 160 ~~153A~~; ~~and~~ Article 9 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective July 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the town council of the Town of Archer Lodge, North Carolina, does ordain as follows:

Sec. 14-2. - Findings of fact.

- (a) The flood prone areas within the jurisdiction of Archer Lodge are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

Sec. 14-3. - Statement of purpose.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters, or which may increase flood hazards to other lands.

Sec. 14-4. - Objectives.

The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the

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- general public;
- (4) Minimize prolonged business losses and interruptions;
- (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) Minimize damage to private and public property due to flooding;
- (7) Make flood insurance available to the community through the National Flood Insurance Program;
- (8) Maintain the natural and beneficial functions of floodplains;
- (9) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (10) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2 - DEFINITIONS.

Sec. 14-5. - Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance it's most reasonable application.

"Accessory Structure (Appurtenant Structure)" means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

"Addition (to an existing building)" means an extension or increase in the floor area or height of a building or structure.

"Alteration of a watercourse" means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

"Area of Shallow Flooding" means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

"Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)".

"Base Flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE)" means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation".

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Building" see "Structure".

"Chemical Storage Facility" means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

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“**Design Flood**”: See “Regulatory Flood Protection Elevation.”

“**Development**” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“**Development Activity**” means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

“**Digital Flood Insurance Rate Map (DFIRM)**” means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“**Disposal**” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“**Elevated Building**” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“**Encroachment**” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

“**Existene building and existing structure**” means any building and/or structure for which the “start of construction” commenced before ~~November 8, 2010~~ December 2, 2005, the effective date of the initial FIRM.

“**Existing Manufactured Home Park or Manufactured Home Subdivision**” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before November 8, 2010, the initial effective date of the floodplain management regulations adopted by the community.

“**Flood**” or “**Flooding**” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

“**Flood Boundary and Floodway Map (FBFM)**” means an official map of a community, issued by the FEMA, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“**Flood Hazard Boundary Map (FHBM)**” means an official map of a community, issued by the FEMA, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“**Flood Insurance**” means the insurance coverage provided under the National Flood Insurance Program.

“**Flood Insurance Rate Map (FIRM)**” means an official map of a community, issued by the FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (see also DFIRM)

“**Flood Insurance Study (FIS)**” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“**Flood Prone Area**” see “Floodplain”

“**Flood Zone**” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects

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the severity or type of flooding in the area.

“**Floodplain**” means any land area susceptible to being inundated by water from any source.

“**Floodplain Administrator**” is the individual appointed to administer and enforce the floodplain management regulations.

“**Floodplain Development Permit**” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“**Floodplain Management**” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“**Floodplain Management Regulations**” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“**Floodproofing**” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“**Flood-resistant material**” means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

“**Floodway**” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“**Floodway encroachment analysis**” means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

“**Freeboard**” means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“**Functionally Dependent Facility**” means a facility which cannot be used for its intended purpose unless it is located in proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“**Hazardous Waste Management Facility**” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“**Highest Adjacent Grade (HAG)**” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“**Historic Structure**” means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing

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- on the National Register;
- (2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (4) Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program.”

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“**Letter of Map Change (LOMC)**” means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (1) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (2) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (3) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community’s floodplain management regulations.
- (4) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

“**Light Duty Truck**” means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

“**Lowest Adjacent Grade (LAG)**” means the lowest elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“**Lowest Floor**” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building’s lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“**Manufactured Home**” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

“**Manufactured Home Park or Subdivision**” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“**Market Value**” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated

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for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“**Map Repository**” means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM’s Floodplain Managements websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website(<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

“**New Construction**” means structures for which the “start of construction” commenced on or after November 8, 2010, the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“**Non-Conversion Agreement**” means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk’s or recorder’s stamps and/or notations that the filing has been completed.

“**Non-Encroachment Area (NEA)**” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“**Post-FIRM**” means construction or other development for which the “start of construction” occurred on or after, December 2, 2005, the effective date, of the initial Flood Insurance Rate Map.

“**Pre-FIRM**” means construction or other development for which the “start of construction” occurred before December 2, 2005, the effective date of the initial Flood Insurance Rate Map.

“**Principally Above Ground**” means that at least 51% of the actual cash value of the structure is above ground.

“**Public Safety**” and/or “**Nuisance**” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“**Recreational Vehicle (RV)**” means a vehicle, which is:

- (1) Built on a single chassis;
 - (2) 400 square feet or less when measured at the largest horizontal projection;
 - (3) Designed to be self-propelled or permanently towable by a light duty truck;
 - (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and
 - (5) Is fully licensed and ready for highway use.
- (for the purpose of this ordinance, “Tiny Homes/Houses” and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.)

“**Reference Level**” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, A99. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within Special Flood Hazard Areas designated as Zones V1-V3.

“**Regulatory Flood Protection Elevation**” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

“**Remedy a Violation**” means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

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“**Riverine**” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“**Salvage Yard**” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“**Solid Waste Disposal Facility**” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“**Solid Waste Disposal Site**” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“**Special Flood Hazard Area (SFHA)**” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in section 14-7 of this ordinance.

“**Start of Construction**” includes substantial improvement and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“**Structure**” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“**Substantial Damage**” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to it’s before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”.

“**Substantial Improvement**” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Article 4-IV, Section 14-49 of this [ordinance chapter](#).

“**Technical Bulletin and Technical Fact Sheet**” means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

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“**Temperature Controlled**” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“**Variance**” is a grant of relief from the requirements of this ordinance.

“**Violation**” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles [4-IV](#) and [5-V](#) is presumed to be in violation until that documentation is provided.

“**Water Surface Elevation (WSE)**” means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

“**Watercourse**” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE [3-III](#) - GENERAL PROVISIONS.

Sec. 14-6. - Lands to which this chapter applies.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction ~~including Extra (ETS), (if applicable) Territorial Jurisdictions~~ of Archer Lodge.

Sec. 14-7. - Basis for establishing the special flood hazard areas.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated December January 5, 2009~~7~~ for Johnston County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and any revision thereto. ~~Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of Archer Lodge are also adopted by reference and declared a part of this ordinance. Subsequent Letters of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 2 months.~~

Sec. 14-8. - Establishment of floodplain development permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Article [3-III](#), Section 14-7 of this [ordinance chapter](#).

Sec. 14-9. - Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

Sec. 14-10. - Abrogation and greater restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 14-11. - Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under State statutes.

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Sec. 14-12. - Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Archer Lodge or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Sec. 14-13. - Penalties for violation.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established about grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Archer Lodge from taking such other lawful action as is necessary to prevent or remedy any violation.

Secs. 14-14—14-44. - Reserved.

ARTICLE ~~II~~ IV. - ADMINISTRATION.

Sec. 14-45. - Designation of floodplain administrator.

The zoning officer, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

Sec. 14-46. - Floodplain development application, permit and certification requirements.

- (a) Application requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
- (1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - a. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - b. The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article ~~III~~ Section 14-7, or a statement that the entire lot is within the Special Flood Hazard Area;
 - c. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article ~~III~~ Section 14-7;
 - d. The boundary of the floodway(s) or non-encroachment area(s) as determined in Article ~~III~~ Section 14-7;
 - e. The Base Flood Elevation (BFE) where provided as set forth in Article ~~3~~ III, Section 14-7, Article ~~4~~ IV, Section 14-47 (11) and (12) or Article ~~4~~ IV, Section 14-47;
 - f. The old and new location of any watercourse that will be altered or relocated because of proposed

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- development; and
- g. The certification of the plot plan by a registered land surveyor or professional engineer.
- (2) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- a. Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
 - b. Elevation in relation to NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO, A99 will be floodproofed; and
 - c. Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.
- (3) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (4) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
- a. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - b. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article ~~4~~ V, Section 14-73 (4) (c) when solid foundation perimeter walls are used in Zones A, AE, AH, AO, A99.
- (5) Usage details of any enclosed areas below the lowest floor.
- (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (7) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (8) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article ~~4~~ V, Section 14-73 (6) and (7) of this ordinance are met.
- (9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (b) Permit requirements. The Floodplain Development Permit shall include, but not be limited to:
- (1) A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
 - (2) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article ~~3~~ III, Section 14-7.
 - (3) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
 - (4) The Regulatory Flood Protection Elevation required for the protection of all public utilities.

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- (5) All certification submittal requirements with timelines.
- (6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Article 5-V, have been met.
- (7) The flood openings requirements, if in Zones A, AE, AH, AO, A99.
- (8) Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).
- (9) All materials below BFE/RFPE must be flood resistant materials.

(c) Certification requirements.

(1) Elevation Certificates

- a. An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be causing to deny a floodplain development permit.
- b. An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be causing to issue a stop-work order for the project.
- c. A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be causing to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken with 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provide in section to the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable.

(2) Floodproofing Certificate

- a. If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and

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the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be causing to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be causing to withhold the issuance of a Certificate of Compliance/Occupancy.

- b. A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be causing to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be causing to deny a Certificate of Compliance/Occupancy.
- (3) If a manufactured home is placed within Zones A, AE, AH, AO, A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5-V, Section 14-73(3).
- (4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (5) Certification Exemptions. The following structures, if located within Zones A, AE, AH, AO, A99, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - a. Recreational Vehicles meeting requirements of Article 5-V, Section 14-73(6)(a);
 - b. Temporary Structures meeting requirements of Article 5-V, Section 14-73(7) and
 - c. Accessory Structures that are 150 square feet or less or \$3000 or less and meeting requirements of Article 5-V, Section 14-73(8).

(d) Determinations for existing buildings and structures.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this

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ordinance is required.

Sec. 14-47. - Duties and responsibilities of the floodplain administrator.

The Floodplain Administrator shall perform, but not be limited to, 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 ordinance 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, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (3) Notify adjacent communities and the North Carolina Department of 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 unless the certification and flood hazard reduction provisions of Article [§ V](#), Section 14-75 are met.
- (6) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article [§ IV](#), Section 14-46(c).
- (7) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article [§ IV](#), Section 14-46(c).
- (8) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Article [§ IV](#), Section 14-46(c).
- (9) When floodproofing is utilized for a structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Article [§ IV](#), Section 14-46(c) and Article [§ IV](#), Section 14-73(2).
- (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 BFE data has not been provided in accordance with the provisions of Article [§ III](#), Section 14-7, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to Article [§ V](#), Section 14-74(2)(b), to administer the provisions of this ordinance.
- (12) When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Article [§ III](#), Section 14-7, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source to administer the provisions of this ordinance.
- (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 BFE, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

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- (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 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 ordinance, 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 Article [§ IV](#), Section 14-48.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Article [§ III](#), Section 14-7 of this ordinance, 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-Fs) and Letters of Map Revision (LOMRs).

Sec. 14-48. - Corrective procedures.

- (a) Violations to be corrected: When the Floodplain Administrator finds violations of applicable state and local laws; it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (b) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (1) That the building or property is in violation of the floodplain management regulations;
 - (2) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter, and
 - (3) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (c) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he

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or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time, not less than sixty (60) calendar days, nor more than least 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

- (d) **Appeal:** Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (e) **Failure to Comply with Order:** If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

Sec. 14-49. - Variance procedures.

- (a) The board of adjustment as established by the Town of Archer Lodge, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ~~ordinance~~ **Chapter**.
- (b) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (c) Variances may be issued for:
- (1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (2) Functionally dependent facilities if determined to meet the definition as stated in Article ~~III~~ **III**, Section 14-5 of this ordinance, provided provisions of Article ~~IV~~ **IV**, Section 14-49, (i), b., c. and e. have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - (3) Any other type of development provided it meets the requirements of this Section.
- (d) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location as defined under Article ~~III~~ **III**, Section 14-5. of this ordinance as a functionally dependent facility, where applicable;
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

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- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (e) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (f) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (g) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (h) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.
- (i) **Conditions for Variances:**
- (1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 - (2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (4) Variances shall only be issued prior to development permit approval.
 - (5) Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (j) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are in Special Flood Hazard Areas if all the following conditions are met.
- (1) The use serves a critical need in the community.
 - (2) No feasible location exists for the use outside the Special Flood Hazard Area.
 - (3) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
 - (4) The use complies with all other applicable federal, state and local laws.
 - (5) The Town of Archer Lodge has notified the Secretary of the North Carolina Department of Public Safety of its

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intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

Secs. 14-50—14-71. - Reserved.

ARTICLE ~~III~~ V. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 14-72. - General standards.

In all Special Flood Hazard Areas, the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, water heaters, and electric outlets/switches.
 - a. Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
 - b. Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article ~~4~~ IV, Section 14-49 (j). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Article ~~4~~ IV, Section 14-49 (i)(3).
- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas,

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electrical, and water systems located and constructed to minimize flood damage.

- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (15) When a structure is in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.
- (16) Fill is prohibited in the SFHA, including construction of buildings on fill. This includes not approving Conditional Letters or Letters of Map Revision - Based on Fill (CLOMR-F or LOMR-F).

Sec. 14-73. - Specific standards.

In all Special Flood Hazard Areas where BFE data has been provided, as set forth in Article ~~8~~ III, Section 14-7 or Article IV, Section 14-47 or Article ~~4~~ IV, Section 14-72, the following provisions, in addition to the provisions of Article ~~8~~ V, Section 14-72, are required:

- (1) Residential construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article ~~8~~ III, Section 14-5 of this ordinance.
- (2) Non-residential construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article ~~8~~ III, Section 14-5 of this ordinance. Structures located in Zones A, AE, AH, AO, A99 may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with section 14-77(3). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in section 14-46(c), along with the operational plan and the inspection and maintenance plan.
- (3) Manufactured homes.
 - a. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in section Article ~~8~~ II, Section 14-5 of this ordinance.
 - b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
 - c. All enclosures or skirting below the lowest floor shall meet the requirements of Article ~~8~~ V, Section 73 (4).
 - d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall

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be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

- (4) Elevated buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- a. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - b. Shall not be temperature-controlled or conditioned;
 - c. Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
 - d. Shall include, in Zones A, AE, AH, AO, A99 flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 2. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 4. The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
 5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
 - e. Fill/Grading
 1. Fill is prohibited in the SFHA
 - f. Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable space; Archer Lodge will have the right to inspect the enclosed area. Archer Lodge will conduct annual inspections. This agreement shall be recorded with the Johnston County Register of Deeds and shall transfer with the property in perpetuity.
 - g. Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation.

(5) Additions/Improvements.

- a. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood

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damages and must not be any more non-conforming than the existing structure.

2. A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
 - b. Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.
 - c. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 1. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
 2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - d. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one-year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
 1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
 2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (6) Recreational vehicles. Recreational vehicles shall either:
- a. Temporary Placement
 1. Be on site for fewer than 180 consecutive days; or
 2. Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions.)
 - b. Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.
- (7) Temporary non-residential structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
- a. A specified time for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;

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- b. The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - c. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - d. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - e. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- (8) Accessory structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- a. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - b. Accessory structures shall not be temperature-controlled;
 - c. Accessory structures shall be designed to have low flood damage potential;
 - d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - e. Accessory structures shall be firmly anchored in accordance with the provisions of Article ~~5-V~~, Section 14-72(1);
 - f. All service facilities such as electrical shall be installed in accordance with the provisions of Article ~~5-IV~~, Section 14-72(4); and
 - g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section 14-73 (4)(d).

An accessory structure with footprint less than 150 square feet or that is a minimal investment of \$3000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Article ~~5-V~~, Section 14-74 (2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with section 14-46 (B) 3.

- (9) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- a. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
 - b. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
 - c. Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Article ~~5-V~~, Section 14-73(2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
 - d. Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

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- 1. At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - 2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- (10) Other development.
- a. Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article ~~5-V~~, Section 14-76 of this ordinance.
 - b. Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article ~~5-V~~, Section 14-76 of this ordinance.
 - c. Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article 5, Section 14-76 of this ordinance.

Sec. 14-74. - Standards for floodplains without established base flood elevations.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article ~~3-III~~, Section 14-7, where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of Article ~~5-V~~, Sections 14-72 and sections 14-73 shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
 - a. When BFE data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article ~~5-IV~~, Sections 14-47(11) and (12).
 - b. When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article ~~5-III~~, Section 14-7.
 - c. All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with Article ~~5-II~~, Section 14-5 and utilized in implementing this ordinance.
 - d. When BFE data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article ~~5-II~~. All other applicable provisions of Article ~~5-V~~, Section 14-73 shall also apply.

Sec. 14-75. - Standards for riverine floodplains with BFE but without established floodways or non-encroachment areas.

Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following

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requirements shall apply to all development within such areas:

- (1) Standards of Article [§-V](#), Sections 14-72 and 14-73; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

Sec. 14-76. - Floodways and non-encroachment areas.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article [§-III](#), Section 14-7. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article [§-II](#), Sections 14-72 and 14-73, shall apply to all development within such areas.

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - a. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or
 - b. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.
- (2) If Article [§-V](#), Section 14-76(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) Manufactured homes may be permitted provided the following provisions are met:
 - a. The anchoring and the elevation standards of Article [§-V](#), Section 14-72 (3); and
 - b. The encroachment standards of Article [§-V](#), Section 14-76(1).

Sec. 14-77. - Standards for areas of shallow flooding (Zone AO).

Located within the Special Flood Hazard Areas established in Article [§-III](#), Sections 14-7, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Article [§-V](#), Sections 14-72 and 14-73, all new construction and substantial improvements shall meet the following requirements:

- (1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two feet, above the highest adjacent grade; or at least two feet above the highest adjacent grade if no depth number is specified.
- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article [§-V](#), Section 14-77 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Article [§-IV](#), Section 14-46(3) and Section 14-73(2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from

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proposed structures.

Sec. 14-78. - Standards for areas of shallow flooding (Zone AH).

Located within the Special Flood Hazard Areas established in Article [§-III](#), Section 14-7, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to Article [§-V](#), Sections 14-72 and 14-73, all new construction and substantial improvements shall meet the following requirements:

- (1) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

Secs. 14-79—14-85. - Reserved.

Article [§-VI](#). - LEGAL STATUS PROVISIONS.

Sec. 14-86. - Effects on rights and liabilities under the existing flood damage.

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted November 8, 2010 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of the Town of Archer Lodge enacted on November 8, 2010, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Archer Lodge is November 8, 2010.

Sec. 14-87. - Effect upon outstanding floodplain development permits.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

Sec. 14-88. - Severability.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

Sec. 14-89. – Effective date.

This [ordinance chapter](#) shall become effective ~~June 4, 2018~~, February 1, 2021.

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Sec. 14-90. - Adoption certificate.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the town council of the town of Archer Lodge, North Carolina, on the ~~4th day of June 2018~~-1st day of February, 2021

WITNESS my hand and the official seal of Kim P. Batten, ~~Finance Manager~~, Town Clerk, this the ~~4th day of June 2018~~- 1st day of February 2021

(signature)

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No discussion. Mayor Mulhollem called for a motion.

Moved by: Council Member Wilson

Seconded by: Mayor Pro Tem Castleberry

Set a Public Hearing for Monday, February 1, 2021 at the Regular Town Council meeting on the Text Amendments to the Code of Ordinances, Archer Lodge, NC, Chapter 14. Flood Damage Prevention.

CARRIED UNANIMOUSLY

c) Discussion and Consideration of Appointing a Town of Archer Lodge Representative for the Johnston County Economic Development Advisory Board

Mayor Mulhollem shared that Mayor Pro Tem Castleberry has represented Archer Lodge on the Johnston County Economic Development Advisory Board for many years. Mayor Pro Tem Castleberry applied to continue serving on behalf of the Town. No discussion followed.

Moved by: Council Member Wilson

Seconded by: Council Member Purvis

Appointed Mayor Pro Tem Castleberry to Continue Representing the Town of Archer Lodge on the Johnston County Economic Development Advisory Board.

CARRIED UNANIMOUSLY

d) Discussion and Consideration of Appointing Budget Officer

Mayor Mulhollem reminded Council that discussion to appoint the Town Administrator as the Budget Officer was held at the Regular Town Council meeting on December 7, 2020 and additional time for consideration was suggested, so Clerk was instructed to place the item on the agenda for tonight's Regular Council meeting.

Mayor explained that this position had been filled by a Town Council Member since incorporation and currently Council Member Bruton holds the position. He further stated that Staff had provided additional information for review. Much discussion followed.

Mayor Mulhollem called for a motion.

Moved by: Council Member Purvis

Seconded by: Mayor Pro Tem Castleberry

Appointed the Town Administrator as the Budget Officer for the Town of Archer Lodge.

CARRIED 4 to 1 (Wilson Opposed)

e) Discussion and Consideration of Amending Article VI, Section 2, Employee Group Health of the Town of Archer Lodge Personnel Policy

Ms. Batten reminded Council that rehired NC Local Government retirees, like Ms. Maybee, are limited to the number of hours she can work in a calendar year as well as a maximum amount of earnings received in a calendar year. She further noted that Ms. Maybee's commitment to the Town from the beginning was and remains bringing the Town's Code in compliance with the laws of NC and to better the Archer Lodge community now and in the future. Ms. Maybee has well demonstrated her commitment to both Council, the Planning Board and other Staff members.

Ms. Batten mentioned that many discussions transpired between her and the Town Administrator about how the Town could acknowledge and recognize Ms. Maybee for "going over and beyond her limitations" for the betterment of Archer Lodge; therefore, the consideration of amending the Personnel policy regarding benefits for Part-time employees appears on the agenda tonight. Staff provided information for Council to review and consider amending the budgeted hours for a Part-time employee from 20 or more hours to 19 or more hours a week. Discussion followed.

Mayor Mulhollem called for a motion.

#1 Motion was made by Council Member Purvis, accompanied with a second by Council Member Jackson, and passed unanimously as noted below.

Discussion followed regarding Amending the Personnel policy by Resolution since the original one was adopted by Resolution on May 7, 2018. Attorney Burrell confirmed that amendments to the Personnel policy should be done by Resolution and suggested that Council Member Purvis amend his #1 Motion.

Having heard from Attorney Burrell, Mayor Mulhollem called for an amended motion to Adopt by Resolution Amending the Personnel Policy as discussed with said Resolution to be placed under the Consent Agenda at the February Regular Council meeting. #2 Motion appears below.

Moved by: Council Member Purvis

Seconded by: Council Member Jackson

#1 - Amended Town of Archer Lodge Personnel Policy, Article VI, Section 2, Employee Group Health to allow employees budgeted to work 19 or more hours per week are eligible for health insurance as provided by the Town on a pro-rated basis.

CARRIED UNANIMOUSLY

Moved by: Council Member Purvis

Seconded by: Council Member Jackson

#2 - Approved to Adopt by Resolution Amending the Town of Archer Lodge Personnel Policy, Article VI, Section 2, Employee Group Health to allow employees budgeted to work 19 or more hours per week are eligible for health insurance as provided by the Town on a pro-rated basis.

CARRIED UNANIMOUSLY

6. TOWN ATTORNEY'S REPORT:

- a) Attorney Burrell had no report.**
-

7. TOWN ADMINISTRATOR'S REPORT:

a) Archer Lodge Park Update

Mr. Gordon shared the following:

- Updated plans from Susan Hatchell Landscape Architect should be provided within the next couple of weeks with RFQ's for Grading Services going out soon thereafter.
 - Met with Todd Ramsey, Johnston County Environmental Health Director, and was instructed that the Town must obtain a Septic Soil Consultant to prepare a design for the septic field which must be done before grading begins.
-

8. PLANNING/ZONING REPORT:

a) Planning | Zoning | Projects | Updates

Ms. Maybee handed out her December 2020 Zoning Report to the members and discussed the following:

- Johnston County Environmental Health Department is at least 10 weeks out in processing septic permits with 20 lots waiting in Archer Lodge.
 - Comprehensive Land Use Plan must be updated by July 2022.
 - Chapter 160D will be incorporated as an Unified Development Ordinance (UDO), for clarity, user friendly, and compliant with the NC Statues.
 - Thanked Ms. Batten and Ms. Lawhorn for working with Edmunds Gov Tech in implementing the permitting software and payments will be received electronically soon.
-

b) Code Enforcement

Ms. Maybee noted that she removed over 20 signs in December 2020 which are stored for 30 days and then discarded. A more comprehensive report will be provided at the February 1, 2021 Regular Town Council meeting.

c) CAMPO Update

Ms. Maybee shared that the December 2020 CAMPO Meeting was cancelled, and the next virtual meeting is scheduled for Thursday, January 7, 2021. She plans to attend and provide an update to Council at the February 2021 Regular Town Council meeting.

9. MAYOR'S REPORT:

- a) Mayor Mulhollem wished everyone a Happy New Year and hoping 2021 will be a better year.

With regards to septic systems, Mayor Mulhollem highly recommended that citizens and property owners have their septic tanks inspected every five years to extend the life of the system.

10. COUNCIL MEMBERS' REMARKS:

(non-agenda items)

- a) Council Member Wilson wished everyone a Happy New Year and announced that he had decided to run for re-election for Town Council if his health allows.

-
- b) Council Member Jackson shared the following:
- Suggested having something in the Council Chamber recognizing those members of the Archer Lodge Exploratory Committee that played a critical role in the incorporation of the Town so that future generations would know.
 - Entice residents just outside of the town limits with "another tool in the toolbox".
-

- c) Mayor Pro Tem Castleberry shared that he reiterated Council Members Jackson's remarks on recognizing the Archer Lodge Exploratory Committee. In addition, he wished everyone a Happy New Year and asked for prayers on a personal note.
-

- d) Council Member Purvis had no remarks.
-

- e) Council Member Bruton hoped for better times ahead in 2021.
-

11. ADJOURNMENT:

- a) Having no further business, Mayor Mulhollem asked for a motion to adjourn meeting.

Moved by: Council Member Jackson

Seconded by: Mayor Pro Tem Castleberry

Adjourned meeting at 8:05 p.m.

CARRIED UNANIMOUSLY


Matthew B. Mulhollem, Mayor


Kim P. Batten, Town Clerk

