

20.06.09/03



Nice Matters!

**Town of Emerald Isle**

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**Mayor**

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**Mayor Pro-Tem**

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**ORDINANCE AMENDING CHAPTER 2 – ADMINISTRATION –  
OF THE UNIFIED DEVELOPMENT ORDINANCE IN ORDER TO COMPLY WITH THE  
FLOODPLAIN MANAGEMENT REQUIREMENTS AS DEFINED IN THE TITLE 44 OF THE  
CODE OF FEDERAL REGULATIONS SECTION 60.3**

**WHEREAS**, the Board of Commissioners adopted a flood damage prevention ordinance on July 1, 1977, and over time these regulations have been adopted into the Town of Emerald Isle Unified Development Ordinance, and

**WHEREAS**, the Board of Commissioners of the Town of Emerald Isle on its own motion or by petition may amend, supplement, change or repeal the flood damage prevention regulations as found in the Unified Development Ordinance, and

**WHEREAS**, the Town of Emerald Isle is required to have flood damage prevention regulations that meet or exceeds the floodplain management requirements as defined in the Title 44 of the Code of Federal Regulations Section 60.3 in order to remain in good standing with the National Flood Insurance Program, and

**WHEREAS**, provisions of the Town of Emerald Isle's flood damage prevention regulations enacted on July 1, 1977, including all revisions therein since are now desired to be amended in an effort to meet and/or exceed those floodplain management requirements defined in the Title 44 of the Code of Federal Regulations Section 60.3,

**NOW, THEREFORE, BE IT RESOLVED** by the Emerald Isle Board of Commissioners that

1. Chapter 2, "Administration", "2.2.4 – Staff, 2.4.9 – Floodplain Development Permit, 2.4.17 – Variances" of the Unified Development Ordinance is hereby amended to read as follows:

2.2.4 - Staff

(5) **Floodplain Administrator**

(A) **Designation of Floodplain Administrator**

The Town Planner/Planning Director hereinafter referred to as the "floodplain administrator" or their designee is hereby appointed to administer and implement the provisions of this Ordinance related to floodplains. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement the provisions of 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.

(B) **Duties and Responsibilities**

Duties of the floodplain administrator shall include, but not be limited to:

- (i) Review all floodplain development applications and issue permits for all proposed development with in flood prone areas to assure that the requirements of the flood damage prevention regulations have been satisfied.
- (ii) Advise permittee that additional federal or state permits (i.e., wetlands, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) may be required, and if specific

federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.

(iii) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(iv) Assure that maintenance is provided within the altered or relocated portion of any watercourse so that the flood-carrying capacity is not diminished.

(v) Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of sections 6.2.4(2) and 6.2.4(5) are met.

(vi) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with section 2.4.9(3).

(vii) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with section 2.4.9(3).

(viii) Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with section 2.4.9(3).

(ix) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with sections 2.4.9(3) and 6.2.4(2)(B).

(x) Where interpretation is needed as to the exact location of boundaries of the special flood hazard 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.

(xi) When base flood elevation (BFE) data has not been provided in accordance with section 6.2.3(2), obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a federal, state, or other source.

(xii) When the exact location of boundaries of the special flood hazard areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a letter of map amendment (LOMA) by FEMA. A copy of the letter of map amendment issued from FEMA will be maintained by the floodplain administrator in the floodplain development permit file.

(xiii) Permanently maintain all records that pertain to the administration of flood-related regulations and make these records available for public inspection. This includes maintaining records of all appeal actions and reporting of any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(xiv) 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 this 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.

(xv) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of the flood damage prevention regulations in 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 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.

(xvi) Revocation of 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, or 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.

(xvii) Make periodic inspections throughout all 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.

(xviii) Follow through with corrective procedures described in sections 9.3.3 and 9.5.1.

(xix) Review, provide input, and make recommendations for variance requests.

(xx) 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 Section 6.2.3 of this ordinance, including the revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

(xxi) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

#### 2.4.9 - Floodplain Development Permit

No development shall occur in flood hazard areas, as defined in section 6.2, Flood Damage Prevention, unless the Floodplain administrator shall first issue a floodplain development permit pursuant to the following requirements and criteria, unless a variance has been approved pursuant to section 2.4.17, Variances.

##### (1) Plans and Application Requirements

Application for a floodplain development permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. . The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit.

##### (i) Plot Plan

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, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
- (b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in 6.2.3(2) of the UDO 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 section 6.2.3(2) of the UDO;
- (d) The boundary of the floodway(s) or non-encroachment area(s) as determined in section 6.2.3(2) of the UDO;
- (e) The base flood elevation (BFE) where provided as set forth in section 6.2.3(2); subsections 2.2.4(3)(B)(xi) and (xii); sections 6.2.4(3) and (4); and subsection 6.2.4(2)(E) of the UDO;
- (f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- (g) The boundary and designation date of the Coastal Barrier Resource System (CBRS) area of Otherwise Protected Areas (OPA), if applicable.
- (h) Preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

(ii) **Development Plan**

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 will be flood-proofed;
- (c) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed;

(iii) **Floodproofing Plan**

If floodproofing, a floodproofing certificate (FEMA Form 086-0-34) and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in subsections 6.2.4(2)(B) and 6.2.4(3)(B) of the UDO.

(iv) **Foundation Plan**

A foundation plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:

- (a) Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);

(b) Should solid foundation perimeter walls be used in floodplains other than coastal high hazard areas, details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with Division 5, subsection 6.2.4(2)(D) of the UDO;

(c) In coastal high hazard areas, the following must also be submitted prior to floodplain development permit issuance. Specific requirements are detailed in section 6.3.4(5) and subsection 6.2.4(2)(D)(iii) of the UDO.

(i) V-zone certification form with accompanying plans and specifications verifying the engineered structure and breakaway wall designs as set forth in subsection 6.2.4(2)(D)(iii) of the UDO;

(ii) Plans for lattice work or decorative screening, if applicable. Plans for any structures that will have lattice work or decorative screening must be submitted to the floodplain administrator for approval prior to floodplain development permit issuance;

(iii) Plans for non-structural fill, if applicable. Plans for placement of any non-structural fill must be submitted to the floodplain administrator for approval prior to floodplain development permit issuance. Requirements are detailed in section 6.2.4(5)(H) of the UDO.

**(v) Usage Details**

Usage details of any enclosed space below the regulatory flood protection elevation.

**(vi) Utility Protection**

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.

**(vii) Other Relevant Permits**

Copy of all other local, state and federal permits required prior to floodplain development permit issuance (i.e. wetlands, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.)

**(viii) Recreation Vehicle Requirements**

If floodplain development permit is issued for placement of recreational vehicles and/or temporary structures, documentation to ensure sections 6.2.4(2)(F) and (G) of the UDO are met.

**(ix) Engineering Report for Watercourse Alteration**

If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; 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.

**(2) Floodplain Development Permit Data Requirements**

The following information shall be provided at a minimum on the floodplain development permit to ensure compliance with this Code.

(A) A complete description of the development to be permitted under the floodplain development permit issuance (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.).

(B) The special flood hazard area determination for the proposed development per available data specified in section 6.2.3(2).

(C) The regulatory flood protection elevation required for the reference level and all attendant utilities.

(D) The regulatory flood protection elevation required for the protection of all public utilities.

(E) All certification submittal requirements with timelines.

(F) Provide a minimum of:

(i) Two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding.

(ii) The bottom of all openings shall be no higher than one (1) foot above grade.

(iii) If a design does not meet these minimum criteria it must either be certified by a professional engineer or architect.

(G) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### (3) Certification Requirements

#### (A) Elevation Certificates

(i) 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 cause to deny a floodplain development permit.

(ii) 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 cause 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 within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. 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

**(B) Floodproofing**

(i) 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 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 cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy

(ii) 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 cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy

**(C) V-Zone/Breakaway Wall**

A V-Zone Certification with accompanying design plans and specifications is required prior to issuance of a Floodplain Development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the Floodplain Administrator said certification to ensure the design standards of this ordinance are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this ordinance. This certification is not a substitute for an Elevation Certificate. In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction

**(D) Manufactured Homes**

If a manufactured home is placed within an A, AE, AH, AO, A99 zone and the elevation of the chassis is above thirty-six (36) inches in height, an engineered foundation certification is required in section 6.2.4(2)(C).

**(E) Altered Watercourses**

If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; 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 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.

**(F) Certification Exemptions**

The following structures, if located within AE1 through AE12 zones, are exempt from the elevation/floodproofing certification requirements specified in sections 2.4.9(1) and (2) above:

- (i) Recreational vehicles meeting requirements of section 6.2.4(2)(F)(i).
- (ii) Temporary structures meeting requirements of section 6.2.4(2)(G); and
- (iii) Accessory Structures less than one hundred fifty (150) square feet or less or five thousand dollars (\$5,000) or less meeting requirements of section 6.2.4(2)(H).

**(4) Determination 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:

- (i) 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;
- (ii) 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;
- (iii) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (iv) 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 ordinance is required.

**2.4.17 - Variances**

**(1) General**

The Board of Adjustment may authorize in specific cases such variances from the terms of this Ordinance that will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this Ordinance would result in unnecessary physical hardship.

**(2) Procedure**

In order to initiate a variance request, the applicant shall file an application with the Board or Adjustment on forms approved by the Town, and with supporting information required by the Town. The Board of Adjustment shall review the application and shall approve or deny the variance, pursuant to the criteria established for different forms of variance in subsections (3), (4), (5), and (6) below. The Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance.

**(3) Criteria for General Variance Approval**

A variance from any of the terms of this Ordinance not governed by subsections (4) or (5) below shall be granted by the Board of Adjustment only if it shall make the following findings:

- (A) That special conditions and circumstances exist that are peculiar to the land, structure, or building involved and that are not applicable to other lands, structures, or buildings in the same district; and
- (B) That literal interpretation of the provisions would deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this Ordinance; and
- (C) That the special conditions and circumstances do not result from the actions of the applicant; and
- (D) That the hardship is of a physical nature and not economic; and
- (E) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other land, structures, or buildings in the same district.

**(4) Criteria for Floodplain Variance Approval**

**(A) Application Requirements**

Applications for floodplain variances shall include a written report addressing each of the above factors:

- (i) The danger that materials may be swept onto other lands to the injury of others;
- (ii) The danger to life and property due to flooding or erosion damage;
- (iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (iv) The importance of the services provided by the proposed facility to the community;
- (v) The necessity to the facility of a waterfront location, where applicable;
- (vi) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (vii) The compatibility of the proposed use with existing and anticipated development;
- (viii) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (x) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
- (xi) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas.

(B) In passing upon floodplain variances, the Board of Adjustment shall consider all technical evaluations, all required application materials and reports, all standards specified in other sections of this Ordinance, and all other relevant factors.

(C) A variance from any of the terms of this Ordinance related to floodplain protection shall be granted by the Board of Adjustment only if it shall make the following findings:

- (i) The applicant has shown good and sufficient cause; and
  - (ii) Failure to grant the variance would result in exceptional hardship; and
  - (iii) 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.
  - (iv) No increase in flood levels during the base flood discharge will result within any designated floodway or non-encroachment area as a result of the variance.
  - (v) The variance will not result in any structure being in violation of other federal, state, or local laws or regulations.
  - (vi) The variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (vii) If the proposed variance is for the repair or rehabilitation of a historic structure, the Variances the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (D) The Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance and to protect the public health, safety, and welfare.
- (E) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.

2. The Board of Commissioners has determined that the above amendment is consistent with the Town of Emerald Isle's 2017 CAMA Land Use Plan, as amended.
3. The Board of Commissioners has determined that the above amendment is both reasonable and in the public interest for the following reasons:
  - Are necessary to protect the life and property of the citizens of the Town of Emerald Isle
  - Are necessary to comply with the standards set forth in Title 44 of the Code of Federal Regulations Section 60.3 in order to remain in good standing with the National Flood Insurance Program
  - Are necessary to keep the current 15% flood insurance rate reduction received by all flood policy holders within the Town of Emerald Isle
4. The Town Clerk is authorized to amend the sections as set forth above.
5. This ordinance shall become effective immediately upon its adoption. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Adopted this the 9th day of June, 2020, by a vote of

Commissioner(s) Dodley, Finch, Messer, Normie, Taylor voting for,

Commissioner(s) \_\_\_\_\_ voting against,  
and

Commissioner(s) \_\_\_\_\_ absent.

  
Eddie Barber, Mayor

ATTEST:  
  
Rhonda Ferebee, Town Clerk

