

ARTICLE 4. ADMINISTRATIVE, LEGISLATIVE, AND QUASI-JUDICIAL AUTHORITY OVERVIEW

Table of Contents

4.1. Types of Authority ..... 1
4.2. Conflicts of Interest ..... 2
4.3. Board of Commissioners – General Authority and Duties..... 3
4.4. Town Clerk – General Authority and Duties ..... 4
4.5. Administrative Staff, Zoning Administrator – General Authority and Duties..... 5
4.6. Planning Board– General Authority and Duties ..... 6
4.7. Board of Adjustment– General Powers and Duties Related To Zoning and Regulation of Development..... 13
4.8. Other Advisory Boards..... 19

4.1. TYPES OF AUTHORITY

Zoning and regulation of development are based upon three separate types of authority as described below. Depending upon the development decision before them, the various Boards and personnel responsible for zoning and regulation of development within the Town of White Lake may utilize these authorities.

4.1.1. Administrative Authority. The authority to make decisions in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in NCGS Chapter 160D or local government development regulations. An administrative decision may include an administrative hearing to gather facts needed to make an administrative decision. These are sometimes referred to as ministerial decisions or administrative determinations. This authority is typically exercised by the planning staff of the jurisdiction.

Statutory Reference - § 160D-102. (102)

4.1.2. Legislative Authority. The authority to adopt, amend, or repeal a regulation under NCGS Chapter 160D or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of Chapter 160D. Legislative decisions often require a hearing to solicit public comment on a proposed legislative decision. This authority is typically exercised by the governing board of the jurisdiction.

Statutory Reference - § 160D-102. (19-20)

4.1.3. Quasi-Judicial Authority. The authority to make decisions involving the finding of facts regarding a specific application of a development regulation and which requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board. This authority is typically exercised by the Board of Adjustment.

**Statutory Reference - § 160D-102. (28) and N.C.G.S. § 160D-406**

**4.2. CONFLICTS OF INTEREST**

In order to promote public confidence in the integrity of the decision-making process, members of all boards, appointed and elected for the Town of White Lake, shall conform to the following conflict of interest policy.

4.2.1. Town Board. A member of the Town Board of Commissioners shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

4.2.1.1. A member of the Town Board of Commissioners shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

4.2.2. Appointed Boards.

4.2.2.1. Members of appointed boards, such as but not limited to the planning board and board of adjustment, shall not vote on a legislative decision regarding a development regulation adopted pursuant to this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

4.2.2.2. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. This shall apply even if no direct financial impact would result for the board/board member.

4.2.3. Administrative Staff. No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship.

4.2.3.1. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

4.2.3.2. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved.

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

4.2.3.3. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.

4.2.4. Quasi-judicial Decisions. A member of any board exercising quasi-judicial functions pursuant to this Ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

4.2.5. Resolution of Objection. If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

4.2.6. Familial Relationship. For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

**Statutory Reference – N.C.G.S. § 160D-109.**

**4.3. BOARD OF COMMISSIONERS – GENERAL AUTHORITY AND DUTIES**

Depending on the type of decision before them, the Board of Commissioners may be called upon to act with legislative, quasi-judicial, or administrative authority. Refer to the **Sections** noted below for further explanation of procedure and process. Note that this Ordinance addresses only the authority and duties of the Board of Commissioners related to zoning and regulation of development. Refer to Chapter 30 of the full Town Code of Ordinances for further information on the powers and duties of the Board of Commissioners and on meetings and hearings.

4.3.1. Legislative: In considering the adoption, amendment or repeal of an ordinance, Board of Commissioners acts in its legislative capacity. The hearings that accompany these decisions are legislative hearings and seek public input on the proposed policy change. Legislative decisions must proceed in accordance with the requirements of N.C.G.S. Article 6 of Chapter 160D.

4.3.2. Quasi-Judicial: The Board of Commissioners, in considering special use permit applications and site-specific development plans, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth for the Board of Adjustment. An evidentiary hearing must be conducted to secure competent, material, and substantial evidence to establish the facts of the case. Testimony in an evidentiary hearing is under oath and subject to cross-examination. Quasi-judicial decisions must proceed in accordance with the requirements of N.C.G.S. Chapter 160D-406. A majority vote shall be required for the Board of Commissioners to issue a special use permit.

4.3.3. Administrative: Should the Board of Commissioners be assigned administrative approvals of any kind, the applicable procedure shall be N.C.G.S. Chapter 160D-403.

4.3.4. Voting: A majority vote, excluding vacant seats and disqualified members as indicated in subsection (2), shall be sufficient for the purpose of taking any official action except that variance requests require a four-fifths ( 4/5 ) vote of its members, excluding vacant seats and disqualified members.

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-4)*

4.3.5. For the purposes of this Section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

**Statutory Authority – N.C.G.S. Chapter 160D-406(i).**

4.3.6. No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234 or G.S. 160D-109. In all other cases except votes taken under G.S. 160D-601, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct. An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance, except an ordinance on which a public hearing must be held pursuant to G.S. 160D-601 before the ordinance may be adopted, may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council.

**Statutory Authority – N.C.G.S. Chapter 160A-75.**

**4.4. TOWN CLERK – GENERAL AUTHORITY AND DUTIES**

In matters related to Planning and Regulation of Development, the Town Clerk shall have the authority and duties below:

4.4.1. Establish and publish application procedures for permits, appeals, and actions pursuant to this Ordinance and forms implementing the same.

4.4.2. Maintain all records pertaining to the provisions of this Ordinance in her office(s) and make said records open for public inspection.

4.4.3. Receive appeals and forward cases to the appropriate Board; and

4.4.4. Perform other duties as may be assigned by the Board of Commissioners

*(Ord. 12/1/1997; 7/8/2014, 3-5)*

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

**4.5. ADMINISTRATIVE STAFF, ZONING ADMINISTRATOR – GENERAL AUTHORITY AND DUTIES**

4.5.1. The Town shall have the authority to enact ordinances, procedures and fee schedules relating to the enforcement of this Ordinance. This shall include an adequate number of qualified staff to administer the Town's zoning and related ordinances. A Zoning Administrator, to be designated by the Town Board of Commissioners, is hereby authorized and it shall be his/her duty to enforce the provisions of this Ordinance. This official shall have the right to enter upon any premises regulated by this Ordinance at any reasonable time necessary to carry out his/her duties. If the suspected violation involves areas which cannot be viewed from public areas, an administrative search warrant must be obtained from a magistrate or judge authorizing a reasonable inspection. It is the intention of this Ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the Zoning Administrator. Appeal from his/her decision may be made to the Board of Adjustment. The Zoning Administrator may be assisted by other town staff in performing the duties herein.

**Statutory Authority – NCGS Chapter 160D-402(a) and 402(b)**

4.5.2. Financial Support. The Town may appropriate for the support of the staff any funds that it deems necessary. It shall have power to fix reasonable fees for support, administration, and implementation of programs authorized by this Chapter and all such fees shall be used for no other purposes.

**Statutory Authority – NCGS Chapter 160D-402(d)**

4.5.3. Duties. In administering the provisions of this Ordinance, the Zoning Administrator shall:

- 4.5.3.1. Receive and process applications for development approvals; Make and maintain records of all applications for permits, special uses, and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
- 4.5.3.2. File and safely keep copies of all plans submitted, and the same shall form a part of the records of his/her office and shall be available for inspection at reasonable times by any interested party.
- 4.5.3.3. Provide notices of applications and hearings. Transmit to the Planning Board, Town Board of Commissioners, and/or the Board of Adjustment all applications and plans for which their review and approval is required along with a report of his/her recommendations as may be required.
- 4.5.3.4. Make decisions and determinations regarding the implementation of the Town's development regulations.
- 4.5.3.5. Determine whether applications for development approvals meet the applicable standards as established by law and local ordinance.
- 4.5.3.6. Provide administrative interpretations of the Zoning Ordinance.
- 4.5.3.7. Issue or deny certificates of zoning compliance or occupancy.
- 4.5.3.8. Provide nonconformity determinations, including expansions of nonconforming uses and structures.

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

4.5.3.9. Conduct inspections of premises and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Administrator shall order discontinuance of illegal use of land, buildings or structures; inform the designated building inspections department of illegal buildings or of additions, alterations, or structural changes there to which are not compliant with the Zoning Ordinance; order discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

4.5.3.10. Recommend bringing judicial action against actual or threatened violations.

4.5.3.11. Maintain the public records of the Planning Board and Board of Adjustment.

4.5.3.12. Perform any other actions that may be required in order to adequately enforce the laws and development regulations under their jurisdiction.

**Statutory Authority – NCGS Chapter 160D-402(b)**

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-3)*

**4.6. PLANNING BOARD– GENERAL AUTHORITY AND DUTIES**

4.6.1. Authority. The Planning Board of the Town of White Lake is created pursuant to NCGS 160D-301.

**Statutory Authority – N.C.G.S. Chapter 160D-301**

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-1)*

4.6.2. Duties. The duties of the Planning Board are to:

4.6.2.1. Prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.

(a) The Comprehensive Plan and any ordinances or other measures to effectuate the plans shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the town and its environs. Reflecting both present and future needs, the Comprehensive Plan shall:

(i) promote health, safety, and the general welfare, as well as efficiency and economy in the process of development;

(ii) support the transportation needs of the Town;

(iii) promote in buildings and structures the necessary safety from fire and other dangers, adequate provision for light and air, and a healthful and convenient distribution of population;

(iv) support the promotion of good civic design and arrangement, the wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements.

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

(b) Comprehensive Plan Contents. - A comprehensive plan may, among other topics, address any of the following as determined by the local government:

- (i) Issues and opportunities facing the local government, including consideration of trends, values expressed by citizens, community vision, and guiding principles for growth and development.
- (ii) The pattern of desired growth and development and civic design, including the location, distribution, and characteristics of future land uses, urban form, utilities, and transportation networks.
- (iii) Employment opportunities, economic development, and community development.
- (iv) Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation, education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure.
- (v) Housing with a range of types and affordability to accommodate persons and households of all types and income levels.
- (vi) Recreation and open spaces.
- (vii) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands. Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality.
- (viii) Protection of significant architectural, scenic, cultural, historical, or archaeological resources.
- (ix) Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.

**Statutory Reference – N.C.G.S. Chapter 160D-501.**

4.6.2.2. Facilitate and coordinate citizen engagement and participation in the planning process;

4.6.2.3. Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

4.6.2.4. Advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

4.6.2.5. Exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct;

4.6.2.6. Provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board;

4.6.2.7. Perform any other related duties that the governing board may direct.

**Statutory Reference – N.C.G.S. Chapter 160D-301(b)**

**4.6.3. Organization.**

**4.6.3.1. Membership.**

(a) **Regular Members.** The Planning Board shall consist of six (6) members. Four members shall reside within the corporate limits of the Town of White Lake and one member may reside within the corporate limits of the Town of White Lake or may reside outside of the corporate limits and own or operate a business within the corporate limits. One member shall reside within the Town's extraterritorial planning area.

(b) **Alternate Members.** The Board of Commissioners may appoint up to two alternate members of the Planning Board who reside inside the Town limits and two alternate members shall be appointed by the Bladen County Board of Commissioners who reside within the Town's extraterritorial jurisdictional planning area.

(c) **Appointment.** The five regular members shall be appointed by the Town Board of Commissioners. The one extraterritorial member shall be appointed by the Board of County Commissioners for Bladen County.

(d) **Proportional Representation.** Representation shall be provided by appointing at least one resident of the entire extraterritorial planning and development regulation area to the planning board. If the Town of White Lake Determines that a larger number of extraterritorial members is needed, the Town Board of Commissioners shall submit to the Board of County Commissioners a resolution requesting that an additional member or members, as appropriate, be appointed.

(i) Proportional representation shall be determined by calculating the proportional relationship of the exterritorial area population to the municipal population and applying that proportional relationship to the total membership of the Planning Board.

(ii) An additional member must be appointed to the Planning Board to achieve proportional representation only when the population of the entire extraterritorial area constitutes a full fraction of the town's population divided by the total membership of the Planning Board.

(iii) The population estimates for this calculation shall be updated no less frequently than after each decennial census.

(iv) The county shall make the appointments within 90 days of a hearing on the matter. Once a city provides proportional representation, no power available to a city under NCGS Chapter 160D shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If the



**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

Board of County Commissioners fails to make appointments within 90 days after receiving a resolution from the Town Board of Commissioners requesting that they be made, the Town Board of Commissioners may make the appointments.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.2)

**Statutory Authority – NCGS Chapter 160D-307(a) and (b)**

(v) If, despite good faith efforts, sufficient numbers of residents of the extraterritorial jurisdiction cannot be found to fill the seats reserved for residents of such area, then the County Board of Commissioners may appoint other residents of the County (including residents of the Town) to fill these seats. If the County Board of Commissioners fails to make these appointments within ninety (90) days after receiving a resolution from the Town Board of Commissioners requesting that they be made, the Town Board of Commissioners may make them.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.2)

**Statutory Authority – NCGS Chapter 160D-307(b)**

(vi) Voting rights. The outside representatives may have equal rights, privileges, and duties with the other members of the board to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1)

**Statutory Authority – NCGS Chapter 160D-307(c)**

4.6.3.2. Term. Planning Board members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed. The maximum number of full consecutive terms that a Planning Board member may serve is three (3), except that the Town Board of Commissioners may extend the number of terms for a Board Member where it is determined that continuity of Board leadership, special expertise, and/or exceptional dedication and experience of a particular Board Member demonstrates the need for such term extension.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.2)

4.6.3.3. Vacancies. Vacancies may be filled by the Town Board of Commissioners for the unexpired terms. Vacancies which occur other than the expiration of term shall be filled by the Town Board of Commissioners or County Board of Commissioners for the remaining period of the term vacated.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.2)

4.6.3.4. Attendance and Removal. Faithful attendance at the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Board. Planning Board members may be removed by the Town Board of Commissioners at

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

any time for failure to attend two consecutive meetings or for failure to attend thirty percent or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Upon request of the Board Member proposed for removal, the Town Board of Commissioners shall hold a hearing on removal before it becomes effective.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.2)*

4.6.3.6. Relocation. If a member moves outside of the jurisdiction from which he has been appointed, that shall constitute a resignation from the Planning Board, effective upon the date a replacement is appointed.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.2)*

4.6.3.7. Service is Volunteer. All members of the Planning Board shall serve without pay, but may be reimbursed for any expense incurred while representing the Board.

*(Ord. 12/1/1997; 7/8/2014, 3-1.2)*

**4.6.4. Meetings.**

4.6.4.1. Organizational Meeting. Within thirty (30) days after appointment, the Planning Board shall hold an organizational meeting for the purpose of reviewing the calendar, establishing a Chair and any other position as may be necessary to transact its business, or for other organizational purposes.

4.6.4.2. Rules of Procedures and Records. The Zoning Administrator shall serve as Secretary and advisor to the Planning Board and shall be responsible for keeping the record of minutes of the Planning Board. The Board shall adopt rules for transaction of its business subject to review and approval by the Town Board of Commissioners and shall keep a record of its member attendance and of its resolutions, discussions, findings and recommendations, which record shall be a public record. All Planning Board meetings shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting. A copy of any adopted rules of procedure shall be maintained by the local government clerk or such other official as designated by ordinance and posted on the local government web site if one exists.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.3)*

**Statutory Authority – NCGS Chapter 160D-308**

4.6.4.3. Frequency. The Planning Board shall hold at least one meeting monthly, except that during the months of May, June, July, and August, the Planning Board may meet only when there is business to transact. All of its meetings shall be open to the public.

(a) Special Meetings. Special meetings of the Board may be called at any time by the Chair, or in his absence, the Vice-Chair. At least forty-eight (48) hours'

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

notice of the time and place of special meetings shall be given, by the secretary or by the Chair, to each member of the Board.

- (b) Cancellation of Meetings. Whenever there is no business for the Board, the Chair may dispense with a regular meeting by giving notice to all members not less than twenty-four (24) hours prior to the time set for the meeting.

**4.6.4.4. Quorum and Voting.**

- (a) Quorum. There shall be a quorum of five (5) members for the purpose of taking any official motion required by this ordinance. A quorum is required for the Planning Board to take official action.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.4)*

- (b) Voting. All actions of the Planning Board shall be taken by majority vote, a quorum being present.

- (1) In voting on recommendations regarding quasi-judicial decisions such as special use permits:

- (i) Vacant positions on the Planning Board, and members who are disqualified from voting due to a conflict of interest, shall not be considered "members of the Board" for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

**Statutory Reference – N.C.G.S. Chapter 160D-406.**

- (ii) A member of the Planning Board shall not participate in, or vote on, any matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation, and that member does not recuse himself/herself, the remaining members shall by majority vote rule on the objection.

**Statutory Reference – N.C.G.S. Chapter 160D-109(d).**

- (iii) No Planning Board member shall vote on recommendations regarding any zoning map amendment (rezoning) or zoning text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

- (iv) A roll call vote shall be taken upon the request of any member.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.4)

**4.6.4.5. Offices and Duties.**

(a) **Chair.** At its first regular meeting of each year, the Planning Board shall, by majority vote of its membership (excluding vacant seats) elect one of its members to serve as Chair. The term of the Chair shall be for one (1) year, with eligibility for re-election. The Chair may take part in all deliberations and may vote on all issues. The Chair shall decide all matters of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matters before the Board.

(b) **Vice-Chair.** A Vice-Chair shall be elected by the Board from among its citizen members in the same manner and for the same term as the Chair. The Vice-Chair shall serve as acting chair in the absence of the Chair, and at such times he shall have the same powers and duties as the Chair. The Vice-Chair may take part in all deliberations and may vote on all issues.

(c) **Secretary.** The Town Clerk or her designee shall serve as secretary to the Planning Board. The secretary, subject to the direction of the Chair and the Board, shall keep all records, shall conduct all correspondence of the Board and shall generally supervise the clerical work of the Board. The secretary shall keep the minutes of each meeting of the Board. These shall show the record of all important facts pertaining to every meeting and hearing, every resolution acted upon by the Board and all votes of members of the Board upon any resolution or other matter, indicating the names of members absent or failing to vote.

(d) Vacancies in these offices may be filled for the unexpired terms only by majority vote of the Board membership (excluding vacant seats).

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.5)

**4.6.5. Oath of Office.** All members appointed to boards under this Article shall, before entering their duties, qualify by taking an oath of office as required by N.C.G.S. 160A-61.

**Statutory Authority – NCGS Chapter 160D-309**

**4.6.6. Advisory Committees.**

4.5.6.1. From time to time, Town Board of Commissioners may appoint one (1) or more individuals to assist the Planning Board to carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider thoroughfare plan(s), bikeway plan(s), housing plans, and economic development plans, etc.

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

4.5.6.2. Members of such advisory committees shall sit as nonvoting members of the Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the Town Board of Commissioners shall be made by the Planning Board.

4.5.6.3. Nothing in this Article shall prevent the Council from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the Council.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.7)

**4.7. BOARD OF ADJUSTMENT— GENERAL POWERS AND DUTIES RELATED TO ZONING AND REGULATION OF DEVELOPMENT**

4.7.1. Authority. There is hereby created a Board of Adjustment pursuant to N.C.G.S. Chapter 160D-302 to be known as the Town of White Lake Board of Adjustment and referred to herein as the Board of Adjustment.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.1)

**Statutory Authority - N.C.G.S. Chapter 160D-302.**

4.7.2. Powers and Duties.

(a) The Board of Adjustment shall hear and decide:

- (1) Appeals from any final and binding order, decision, requirement, or interpretation made by the Zoning Administrator.
- (2) Applications for special exceptions concerning nonconforming uses.
- (3) Applications for general variances.
- (4) Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines.
- (5) Any other matter the Board is required to act upon by any other Town ordinance.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.7(D))

**Statutory Authority - N.C.G.S. Chapter 160D-302.**

4.7.3. Organization.

(a) Membership.

- (1) Regular Members. The Board of Adjustment shall consist of six (6) members. Four members shall reside within the corporate limits of the Town of White Lake and one member may reside within the corporate limits of the Town of White Lake or may reside outside of the corporate limits and own or operate a business within the corporate limits. One member shall reside within the Town's extraterritorial planning area.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.2)

**Statutory Authority – NCGS Chapter 160D-302(a)**

- (2) Alternate Members. The Board of Commissioners may appoint up to two alternate members of the Board of Adjustment who reside inside the Town limits and two

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

alternate members shall be appointed by the Bladen County Board of Commissioners who reside within the Town's extraterritorial jurisdictional planning area.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.2.2)

**Statutory Authority – NCGS Chapter 160D-302(a)**

(b) **Appointment.** The five regular members shall be appointed by the Town Board of Commissioners. The one extraterritorial member shall be appointed by the Board of County Commissioners for Bladen County.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-1.2.2)

**Statutory Authority – NCGS Chapter 160D-302(a)**

(c) **Proportional Representation.** Representation shall be provided by appointing at least one resident of the entire extraterritorial planning and development regulation area to the planning board. If the Town of White Lake Determines that a larger number of extraterritorial members is needed, the Town Board of Commissioners shall submit to the Board of County Commissioners a resolution requesting that an additional member or members, as appropriate, be appointed.

(1) Proportional representation shall be determined by calculating the proportional relationship of the extraterritorial area population to the municipal population and applying that proportional relationship to the total membership of the Planning Board.

(2) An additional member must be appointed to the Planning Board to achieve proportional representation only when the population of the entire extraterritorial area constitutes a full fraction of the town's population divided by the total membership of the Planning Board.

(3) The population estimates for this calculation shall be updated no less frequently than after each decennial census.

(4) The county shall make the appointments within 90 days of a hearing on the matter. Once a city provides proportional representation, no power available to a city under NCGS Chapter 160D shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If the Board of County Commissioners fails to make appointments within 90 days after receiving a resolution from the Town Board of Commissioners requesting that they be made, the Town Board of Commissioners may make the appointments.

(5) If, despite good faith efforts, sufficient numbers of residents of the extraterritorial jurisdiction cannot be found to fill the seats reserved for residents of such area, then the County Board of Commissioners may appoint other residents of the County (including residents of the Town) to fill these seats. If the County Board of Commissioners fails to make these appointments within ninety (90) days after receiving a resolution from the Town Board of Commissioners requesting that they be made, the Town Board of Commissioners may make them.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.2)

**Statutory Authority – NCGS Chapter 160D-307(b)**

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

(6) Voting rights. The outside representatives may have equal rights, privileges, and duties with the other members of the board to which they are appointed, regardless of whether the matters at issue arise within the city or within the extraterritorial area; otherwise they shall function only with respect to matters within the extraterritorial area.

**Statutory Authority – NCGS Chapter 160D-307(c)**

(d) Term. Board of Adjustment members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed. The maximum number of full consecutive terms that a Board of Adjustment member may serve is three (3), except that the Town Board of Commissioners may extend the number of terms for a Board Member where it is determined that continuity of Board leadership, special expertise, and/or exceptional dedication and experience of a particular Board Member demonstrates the need for such term extension.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.2)

(e) Vacancies. Vacancies may be filled by the Town Board of Commissioners for the unexpired terms. Vacancies which occur other than the expiration of term shall be filled by the Town Board of Commissioners or County Board of Commissioners for the remaining period of the term vacated.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.2)

(f) Attendance and Removal. Faithful attendance at the meetings of the Board of Adjustment is considered a prerequisite for the maintenance of membership on the Board. Board members may be removed by the Town Board of Commissioners at any time for failure to attend three consecutive meetings or for failure to attend fifty percent or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Upon request of the Board Member proposed for removal, the Town Board of Commissioners shall hold a hearing on removal before it becomes effective.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.2)

(g) Relocation. If a member moves outside of the jurisdiction from which he has been appointed, that shall constitute a resignation from the Planning Board, effective upon the date a replacement is appointed.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.2)

(h) Service is Volunteer. All members of the Planning Board shall serve without pay, but may be reimbursed for any expense incurred while representing the Board.

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.2)

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

**4.7.4. Meetings.**

- (a) The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with procedures delineated in this Ordinance.
- (b) The Board shall conduct its meetings in accordance with the quasi-judicial procedures set forth in this Ordinance and in accordance with its bylaws.
- (c) All meetings of the Board shall be open to the public and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.
- (d) *Conflicts on Quasi-Judicial Matters.* A member of the Board of Adjustment or any other body exercising the functions of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close family, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to member's participation and that member does not recuse himself or herself, the remaining members shall, by majority vote, rule on the objection.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.3)*

**4.7.5. Quorum.** There shall be a quorum of five (5) members for the purpose of taking any official motion required by this ordinance. A quorum is required for the Board of Adjustment to take official action. A member who has withdrawn from the meeting without being excused shall be counted as present for purposes of determining whether a quorum is present.

*(Ord. 12/1/1997; Ord. 7/8/2014, 32.3)*

**4.7.6. Voting.**

- (a) The concurring vote of four-fifths of the board shall be necessary to grant a variance.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

**Statutory Reference – N.C.G.S. Chapter 160D-406(i)**

- (b) A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

**Statutory Reference – N.C.G.S. Chapter 160D-406(i)**

- (c) For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be



**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

**Statutory Reference – N.C.G.S. Chapter 160D-406(i)**

(d) Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has excused himself/herself in accordance with subsection (e) or has been allowed to withdraw from the meeting in accordance with subsection (f).

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

(e) Members of the Board of Adjustment shall be bound by the Conflict of Interest provisions outlined in **Section 4.2**.

(f) If an objection is raised to a member's participation, and that member does not recuse himself/herself, the remaining members shall by majority vote, rule on the objection.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

(g) A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

(h) A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

(i) A roll call vote shall be taken for each motion. The Board shall keep minutes of its proceedings showing the vote of each member, the Board's findings of fact, and the Board's decision.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

(j) On all appeals, applications, or other matters brought before the Board of Adjustment, the Board shall inform, in writing, all parties involved in its decision, including the Chairman of the Planning Board, and reasons therefor.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.5)*

**4.7.7. Oath of Office**

All members appointed to boards under this Article shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

**Statutory Reference – N.C.G.S. Chapter 160D-309**

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

**4.7.8. Rules of Procedure**

Rules of procedure that are consistent with the provisions of this Chapter may be adopted by the governing board for any or all boards created under this Article. In the absence of action by the governing board, each board created under this Article is authorized to adopt its own rules of procedure that are consistent with the provisions of this Chapter. A copy of any adopted rules of procedure shall be maintained by the local government clerk or such other official as designated by ordinance and posted on the local government Web site if one exists. Each board shall keep minutes of its proceedings.

**Statutory Reference – N.C.G.S. Chapter 160D-308**

**Cross Reference – See Article 6 of this Ordinance for details on quasi-judicial process and procedure.**

**4.7.9. Board of Adjustment Officers.**

(a) **Chair.** At its first regular meeting after June of each year, the Board of Adjustment shall, by majority vote of its membership (excluding vacant seats) elect one of its members to serve as chairman. The Chair shall be elected by majority vote. His term of office shall be for one year, and until his successor is elected, beginning on July 1st, and the Chair shall be eligible for re-election. Subject to this Ordinance, the Chair shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matter before the Board.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.6)*

(b) **Vice-Chair.** A Vice-Chair shall be elected by the Board from among its members in the same manner and for the same term as the Chair. He shall serve as acting Chair in the absence of the Chair, and at such times he shall have the same powers and duties as the Chair.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.6)*

(c) **Administering Oaths.** The chair of the Board of Adjustment or any member acting as chair and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.6)*

(d) The chairman and vice-chairman of the Board of Adjustment may take part in all deliberations and may vote on all issues.

*(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.6)*

(e) The Town Clerk or her designee shall serve as secretary to the Board of Adjustment.

*(Ord. 12/1/1997; 7/8/2014, 3-2.6)*

**ARTICLE 4: Administrative, Legislative, and Quasi-Judicial Authority Overview**

(f) The chair of the Board of Adjustment or any member acting as chair may subpoena witnesses and compel the production of evidence. The procedure to request the issuance of a subpoena is delineated in Section 7-9(D).

(Ord. 12/1/1997; Ord. 7/8/2014, 3-2.6)

**4.8. OTHER ADVISORY BOARDS**

4.8.1. The Town of White Lake may establish by ordinance additional advisory boards as deemed appropriate. The ordinance establishing such boards shall specify the composition and duties of such board and shall make conflict of interest regulations applicable to members of such boards.

**Statutory Reference – N.C.G.S. Chapter 160D-306.**