

ARTICLE VIII

ENFORCEMENT

8-1 VIOLATIONS

Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Article and by state law.

8-1.1 Development Without Permit

To engage in any development, use, construction, remodeling or other activity of any nature upon the land or improvements thereon subject to the jurisdiction of this Ordinance without all required permits, certificates or other forms of authorization as set forth in this Ordinance to conduct or engage in such activity.

8-1.2 Development Inconsistent With Permit

To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form of authorization granted for such activity.

8-1.3 Violation by Act or Omission

To violate, by act or omission, any term, variance or waiver, condition, or qualification placed by the governing body or its agent boards upon any required permit, certificate or other form of authorization for the use, development or other activity upon land or improvements thereon.

8-1.4 Use in Violation

To erect, construct, reconstruct, alter, repair, convert, maintain or use any building or structure or to use any land in violation or contravention of this Ordinance, or amendment thereto, or any other regulation made under the authority conferred thereby.

8-1.5 Subdivide in Violation

To subdivide land in violation of this Ordinance or transfer or sell land by reference to, exhibition of, or any other use of a plat or map showing a subdivision of land before the plat or map has been properly approved under this Ordinance and recorded in the Office of the Register of Deeds. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.

8-1.6 Continue a Violation

Each day's violation of any provision of this Ordinance is a separate and distinct offense.

8-2 ENFORCEMENT INTENT

8-2.1 Questions

It is the intention of this Ordinance, unless otherwise provided, that all questions arising in connection with the enforcement of this Ordinance shall be presented to the Board of Adjustment only on appeal from the Enforcement Officer's decision. An appeal from the decision of the Board of Adjustment shall be by proceeding in the nature of certiorari to the Superior Court as provided by law.

8-2.2 Governing Body

It is further the intention of this Ordinance that the duties of the Governing Body in connection with this Ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof.

8-3 ENFORCEMENT PROCEDURE

When the Enforcement Officer or his agent finds a violation of this Ordinance, it shall be his duty to notify the owner or occupant of the land, building, structure, sign, or use of the violation. The owner or occupant shall immediately remedy the violation.

8-3.1 Notice of Violation

If the owner or occupant of the land, building, sign, structure, or use in violation fails to take prompt corrective action, the Enforcement Officer shall give the owner or occupant written notice, by certified or registered mail to his last known address, or by personal service or by posting notice of the violation conspicuously on the property:

- A) that the land, building, sign, structure, or use is in violation;
- B) the nature of the violation, and citation of the section of the ordinance violated;
- C) the measures necessary to remedy the violation;

8-3.2 Appeal

Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Enforcement Officer to the Board of Adjustment (unless this Ordinance has specified that another board shall hear the appeal of the violation) within fifteen (15) days following the date of the Notice of Violation. The Board of Adjustment, or designated board, shall hear an appeal within a reasonable time, and it may affirm,

modify, or revoke the Notice of Violation. In the absence of an appeal, the remedies and penalties sought by the Enforcement Officer in the Notice of Violation shall be final.

8-3.3 Order of Corrective Action

If upon a hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall find that the owner or occupant is in violation of this Ordinance, the Board of Adjustment shall make an order in writing to owner or occupant affirming the violation and order compliance.

8-3.4 Failure to Comply with an Order

If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or an Order of Correction Action following an appeal, the owner or occupant shall be subject to such remedies and penalties as may be provided for by state law and Section 8-4 (Remedies). If the owner or occupant fails to comply with the remedies and penalties prescribed, enforcement shall be sought through an order of a court of competent jurisdiction.

8-4 REMEDIES

Anyone or all of the following procedures may be used to enforce the provisions of this Ordinance.

8-4.1 Injunction

Any violation of this Ordinance or of any condition, order, or requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, or mandated by injunction or other appropriate proceeding pursuant to state law.

8-4.2 Civil Penalties

Any person who violates any provisions of this Ordinance shall be subject to the assessment of a civil penalty under the procedures provided in Section 8-5 (Civil Penalties – Assessments and Procedures).

8-4.3 Denial of Permit or Certificate

The Enforcement Officer may withhold or deny any permit, certificate, occupancy or other form of authorization on any land, building, sign, structure or use in which there is an uncorrected violation of a provision of this Ordinance or of a condition or qualification of a permit or certificate or other authorization previously granted.

8-4.4 Conditional Permit or Temporary Certificate

The Enforcement Officer may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental legal authority.

8-4.5 Stop Work Orders

Whenever a building, sign, or structure, or part thereof being constructed, reconstructed, altered or repaired in violation of this Ordinance, the Enforcement Officer may order the work to be immediately stopped. The stop order shall be in writing and directed to the owner, occupant, or person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with NCGS 160A-421 or 153A-361, as applicable, or the NC Building Code.

8-4.6 Revocation of Permits

The Enforcement Officer may revoke and require the return of a permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications refusal or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations made in securing the permits. Any permits mistakenly issued in violation of an applicable state or local law may also be revoked.

8-4.7 Criminal Penalties

Any violation of this Ordinance shall be a misdemeanor or infraction as provided by NCGS 14-4.

8-5 CIVIL PENALTIES – ASSESSMENT AND PROCEDURES

8-5.1 Penalties

Any person who violates any provisions of this Ordinance shall be subject to assessment of a civil penalty in the amount of \$50.00 the first violation; \$100.00 for the second violation; \$200.00 for the third violation; and \$400.00 for the fourth and succeeding violations thereafter.

8-5.2 Notice

No civil penalty shall be assessed until the person alleged to be violation has been notified of the violation in accordance with Section 8-3.1 (Notice of Violation). If after receiving a notice violation under Section 8-3.1, the owner or other violator fails take

corrective action, a civil penalty may be imposed under this Section in the form of a citation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator and shall direct the violator to pay the civil penalty within fifteen (15) days of the date of the notice.

8-5.3 Responsible Parties

The owner or occupant of any land, building, structure, sign, or of land or part thereof and any architect, builder, contractor, agent or any other person who participates or acts in concert, responsible for the violation and subject to the civil penalties and remedies herein provided.

8-5.4 Continuing Violation

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

8-5.5 Demand for Payment

The Enforcement Officer shall make demand for payment upon the property owner or person in violation, and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

8-5.6 Nonpayment

If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil action in the appropriate division of the General Courts of Justice for recovery of the civil penalty. Provided, however, if the civil penalty is not paid within the time prescribed, the Enforcement officer may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to NCGS 14-4.

8-6 CIVIL PENALTIES – SOIL EROSION AND SEDIMENTATION CONTROL

8-6.1 General

Any person who violates any of the provisions of Section 7-4 (Soil Erosion and Sedimentation Control), or rules or orders adopted or issued pursuant to it, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved erosion and sedimentation control plan, shall be subject to a cumulative civil penalty of not more than \$100.00 per day, except that the penalty for failure to submit an erosion and sedimentation control plan shall be as provided in Section 8-6.3 (Erosion and Sedimentation Control Plan). The Enforcement Officer shall consider the

degree and extent of harm caused by the violation and the cost of rectifying the damage in determining the civil penalty.

8-6.2 Specific Civil Penalties

The amount of the civil penalty shall be assessed pursuant to the following:

- A) Grading Without Permit: \$100.00 per day for failure to secure a valid grading permit prior to conducting a land-disturbing activity when more than one contiguous acre is to be disturbed.
- B) Failure to Protect: \$100.00 per day for failure to take all reasonable measures to protect public property, private property, a lake and/or natural watercourse, from damage caused by land-disturbing activities.
- C) Failure to Follow Plan: \$75.00 per day for failure to conduct a land-disturbing activity in accordance with the provisions of the approved erosion and sedimentation control plan.
- D) Failure to Install Devices: \$75.00 per day for failure, when more than one contiguous acre is disturbed, to install erosion and sedimentation control devices sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract or tracts during construction upon and development of the tract(s).
- E) Failure to Maintain Measures: \$75.00 per day for failure to maintain satisfactory erosion and sedimentation control measures, structures and/or devices on the site that are designed to provide protection from the calculated maximum peak rate of runoff from the 10-year storm.
- F) Failure to Maintain Temporary Measures: \$75.00 per day for failure to maintain temporary and permanent erosion and/or sedimentation control measures and facilities during the development of the site.
- G) Failure to Maintain slopes: \$50.00 per day for failure on graded slopes and fills to maintain an angle sufficient to retain vegetative cover or other adequate erosion control devices or structures.
- H) Failure to Cover Slopes: \$50.00 per day for failure within thirty (30) days of completion of any phase or grading to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, and/or structures sufficient to restrain erosion.
- I) Failure to Plant Cover: \$50.00 per day for failure on a tract when more than one contiguous acre is uncovered, to plant or otherwise provide ground cover sufficient to restrain erosion within thirty (30) working days or one-hundred and twenty (120) calendar days, whichever is the shorter, following completion of construction or development.
- J) Failure to Revise Plan: \$25.00 per day for failure to fill an acceptable, revised erosion and sedimentation control plan after notified by of the need to do so.

- K) Failure to Maintain Buffer: \$25.00 per day for failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.

8-6.3 Erosion and Sedimentation Control Plan

Any person who fails to submit an erosion and sedimentation control plan for approval as required by this Ordinance shall be subject to a single, non-continuing civil penalty of not more than \$1,000.00. any person may be subject to additional civil penalties for violation of any other provisions of this Ordinance. Provided, however, that no civil penalty shall accrue in excess of \$100.00 per day in addition to the \$1,000 civil penalty as provided in this Section.

8-6.4 Civil Penalty Use

Civil penalties collected for erosion and sedimentation control violations shall be used or disbursed as directed by NCGS 133A-64(a).

8-7 CRIMINAL PENALTY – SOIL EROSION AND SEDIMENTATION CONTROL

Any person who knowingly or willfully violates any soil erosion and sedimentation control provisions of this Ordinance, or rule or order adopted or issued pursuant to the soil erosion and sedimentation control provisions, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed ninety (90) days, or by a fine not to exceed \$5,000, or both, in the discretion of the court.

8-8 OTHER POWERS AND ACTIONS

8-8.1 State and Common Law Remedies

In addition to other enforcement provisions contained in this Article, the Governing Body may exercise any and all enforcement powers granted to it by state law or which remedies were available at common law for enforcement under the equitable power of the court.

8-8.2 Previous Enforcement

Nothing in this Ordinance shall prohibit the continuation of previous enforcement actions undertaken pursuant to valid resolution and law.

8-9 REMEDIES CUMULATIVE AND CONTINUOUS

8-9.1 Cumulative Violations

All such remedies provided herein shall be cumulative. To the extent that North Carolina law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

8-9.2 Repeat Violations

If an owner or occupant repeats the same violation within a five year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies.

8-10 ACTION BY OTHERS

8-10.1 Adjacent or Neighboring Property

In addition to the remedies of the local government hereunder, if any building or structure is erected, constructed, reconstructed, repaired, converted or maintained, or any building, structure or land is used in violation of this Ordinance, any other appropriate authority or any adjacent, nearby or neighboring property owner who would be affected by such violation may institute injunction, mandamus or other appropriate action or proceeding to prevent the occupancy of such building, structure or land, or the continuance of any construction whatsoever in violation of this Ordinance.

8-10.2 Land Purchaser

In the event that a purchaser buys land for which is a surety to secure performance of improvements after a period of eighteen (18) months has passed since the date of Final Plat recordation, the purchaser may bring action to enforce completion of the improvements. In such a case, the purchaser may seek specific performance.