

COUNTY OF MIDDLESEX
COMMONWEALTH OF MASSACHUSETTS

GENERAL BY-LAWS

OF THE

TOWN OF LINCOLN

PRICE - \$10.00

As adopted by vote of the Town March 16, 1959, and thereafter amended
Latest amendments dated March 27, 2004

GENERAL BY-LAWS OF THE
TOWN OF LINCOLN

ARTICLE I General Provisions

- Section 1.** The following provisions shall constitute the General By-laws of the Town of Lincoln, which shall be in lieu of all General By-laws heretofore in force. These By-laws shall have no retroactive effect. Nothing in these General By-laws shall affect any special By-laws of the Town, including the Zoning By-laws and the Building Code By-laws.
- Section 2.** The repeal of a By-law shall not thereby have the effect of reviving any By-laws theretofore repealed.
- Section 3.** Whenever a penalty is provided for the violation of a By-law it shall be for each violation.
- Section 4.** Whoever violates any provisions of these By-laws whereby any act or thing is enjoined or prohibited, shall, unless other provision is expressly made, pay a fine not exceeding twenty dollars for each offense.
- Section 5.** Unless otherwise provided in these By-laws, governing instrument or the General Laws, any Board, Commission, or committee of the Town may act by a majority.
- Section 6.** Any or all of these By-laws may be repealed or amended or other By-laws may be adopted at any Town Meeting, an article or articles for that purpose having been inserted in the warrant for such meeting. It shall be sufficient notice of the proposed amendment if the text thereof is on file at the Selectmen's office and available for inspection seven or more days prior to the Town Meeting.
- Section 7.** Whenever reference is made in these By-laws to the General Laws, such reference shall mean the General Laws of the Commonwealth of Massachusetts as from time to time amended.
- Section 8.** Whenever reference is made to committees in these By-laws, for the purposes of these By-laws only the term committees shall include boards and commissions.

ARTICLE II Town Meetings

Section I. Time

The Annual Town Meeting shall be held on the Saturday before the last Monday in March in each year at 9:30 A.M. for the transaction of all business except that the election of officers and the determination of such matters as by law are required to be elected or determined by ballot shall take place on the last Monday in March, when the polls shall be open from 7:30 A.M. until 7:00 P.M., or to such later time up to 8:00 P.M. as the Moderator may determine, provided, however, that whenever the date for the Annual Town Meeting, as hereby established, falls on the Saturday before Easter Sunday, the Annual Town Meeting shall be held on the following Saturday, although the Election and ballot questions hereinabove described shall still be held on the last Monday in March.

Section 2. Special Meetings

Special meetings may be called at any time by the Selectmen or in any other manner provided by law.

Section 3. Warrant

Every Town Meeting shall be called pursuant to a Warrant under the hands of the Selectmen stating the time and place of holding the same and the subjects to be acted upon, notice of which Warrant shall be given at least seven (7) days before the Annual Town Meeting and at least fourteen (14) days before any Special Town Meeting by a constable or other person to whom it is directed, who shall attest and post copies thereof in or on three or more buildings belonging to the Town or any three public places in the Town and make his return of service thereof to the Selectmen. In addition, the Selectmen shall send by mail or otherwise to each household within the Town, at least seven days before the time appointed for such meeting, a copy of such notice and Warrant, but failure to receive such notice and Warrant shall not invalidate any action taken at such meeting.

Section 4. Registered voters

Admission to the place of meeting or to a defined portion set aside for the holding thereof shall be open only to registered voters whose names appear on the check list thereof. The Moderator shall enforce this section throughout each meeting.

Section 5. Quorum

The number of voters necessary to constitute a quorum at any Town Meeting shall be 100, provided, however, that a number less than a quorum may from time to time adjourn the same. This section shall not apply to such parts of meetings as are devoted to the election of Town Officers.

Section 6. Action on Articles

Articles of the warrant shall be acted upon in the order in which they appear unless otherwise determined by vote of the meeting.

Section 7. Motions

A motion shall, if required by the Moderator, be reduced to writing before being submitted to the meeting.

Section 8. Questions

When a question is put, the sense of the meeting shall be determined by voice vote unless otherwise provided by law, and the Moderator shall declare the vote as it appears to him. If the Moderator is in doubt as to the result of such voice vote, or if his decision is immediately questioned by seven or more voters rising in their places for that purpose, the Moderator shall call for another vote to be taken, as he may decide, by show of hands, by standing vote, by use of the check list, or by ballots. Whenever a two-thirds vote of a town meeting is required by statute the Moderator may declare the motion passed by voice vote without a count if it appears that the two-thirds vote has been obtained, provided that if seven or more voters question the Moderator's declaration, another vote shall be taken in the manner prescribed in this section.

Section 9. Question - motions

When a question is before the meeting, the following motions, to wit:

- (1) To adjourn
- (2) To lay on the table

- (3) For the previous question
- (4) To postpone to a certain time
- (5) To commit, recommit or refer
- (6) To amend
- (7) To postpone indefinitely

shall be received and shall have preference in the foregoing order; and the first three shall be decided without debate, and the second and the third by two-thirds vote.

Section 10. Motion to dissolve

No motion, the effect of which would be to dissolve the meeting, shall be in order until every article in the warrant for such meeting has been finally disposed of, but this shall not preclude an adjournment of the meeting to some other date.

Section 11. Amendments involving money

On proposed amendments involving the expenditure of sums of money, the larger or largest amount to be disbursed shall be put to the question first, and an affirmative vote thereon shall be a negative vote on the other amount or amounts.

Section 12. Committee Reports

(a) All committees (hereinafter select committees) the appointment of which was authorized by the Town Meeting, other than permanent committees, shall report as directed by the Town. When a report of such a committee is placed in the hands of the Moderator, it shall be deemed to be properly before the meeting for its action thereon, and a vote to accept the same shall discharge the committee excepting that if a committee requests that it be continued to a specified date in order to complete its assignment and if the Town so votes, said committee shall be continued to said specified date.

(b) If a select committee shall make no report by the time specified when it was created or, in the absence of any such specified time, within one year after its appointment, such select committees shall be discharged unless in the meantime the Town shall have granted an extension to a specified date.

(c) For the adoption of any of the recommendations of a select committee, a specific vote shall be required.

Section 13. Consent Calendar

Before any annual Town Meeting the Moderator may select from the Warrant those articles which in his judgment are likely to be adopted without debate and cause such articles and the motions to be made under each one to be published in a Consent Calendar, copies of which shall be sent by mail or otherwise to each household at least seven days before the date of such meeting. At an appropriate time in the meeting, the Moderator may announce consideration of the Consent Calendar. Notwithstanding the provisions of **Section 6 and 9 of this Article II**, a motion is then in order to adopt the motions in the Consent Calendar as a group without debate. After seconding of the motion the Moderator shall recognize any voter for the purpose of holding out any article and shall cause any article thus held out to be deleted from the motion to adopt. When all requests to hold out articles have been received, he shall put the motion as modified to a vote. Adoption of the motion by unanimous vote shall constitute adoption of all of the motions contained therein. Thereafter all articles held out, or if the motion to adopt is not voted unanimously, all articles in the Consent Calendar, shall be acted upon in accordance with the provisions of **Sections 6 and 9 of this Article**.

ARTICLE III Powers and Duties of Certain Officers

Section 1. Selectmen

The Selectmen shall have general direction and management of the property and affairs of the Town in all matters not otherwise provided by the General Laws and these By-laws.

Section 2. Treasurer

(a) The Town Treasurer shall have custody of all funds belonging to the Town, including trust funds except funds for which other provision is made by law. Unless otherwise provided by law he shall pay no money from the treasury except upon a warrant signed by a majority of the Selectmen. Such warrant shall be sufficient authority to the Treasurer to pay the same, and the payment thereof shall discharge him from all liability on account of the money so paid.

(b) The Treasurer shall file and safely keep all receipts, vouchers and canceled obligations of the Town and shall have the custody of all deeds, contracts, insurance policies and other similar documents owned or held by the Town, and, except for fidelity bonds covering Town officers and employees which shall be filed with the Selectmen, shall have custody of all bonds which run to the Town or any of its commissioners, committees or officers.

Section 3. Town Collector

(a) The Collector of taxes shall collect, under the title of Town Collector, all accounts due the Town except interest on investments of trust and other funds.

(b) All accounts coming due the Town shall forthwith be committed by the several officers and committees of the Town to the Town Collector, together with all available information in relation thereto.

(c) If it shall seem advisable to the Town Collector that suit should be instituted on behalf of the Town for the establishment or collection of any account due the Town, he shall so notify the Selectmen, and he shall report to them from time to time, as they may direct, upon all uncollected accounts in his hands.

(d) The Town Collector shall, at least once in each week, pay over to the Town Treasurer all money received by him on every such account, including any sums received as interest thereon, and shall transmit to the Town Accountant a statement thereof.

Section 4. Town Clerk

(a) As soon as may be but in any event within the week following the final adjournment of any Town Meeting, the Town Clerk shall transmit to the Selectmen, to the Town Treasurer, to the Town Accountant, and to the Assessors, certified copies of all votes appropriating money or authorizing the expenditure of money or otherwise affecting the finances of the Town, and within the same period the Town Clerk shall transmit to all other Town officers or committees a certified copy of any vote of the Town affecting their respective powers or duties.

(b) The Town Clerk shall have custody of the Town Seal.

(c) The Town Clerk shall keep a file of all Town Reports, reports of all committees of the Town, and all original documents relating to the affairs of the Town which may come into his possession. It shall be the duty of the Town Clerk to see that

all conveyances of real estate to the Town are properly recorded in the Registry of Deeds.

Section 5. Town Accountant

(a) The Selectmen may appoint a Town Accountant for a term of three years and until his successor is qualified.

(b) All heads of departments, officers, and committees shall transmit to the Town Accountant all bills, drafts, orders, and payrolls chargeable to the respective appropriations of which they have the expenditure. The Town Accountant shall draw warrants upon the Treasury for all such bills, drafts, orders, and payrolls as have been approved and are correct and are not in excess of the appropriations therefor, and transmit the same to the Selectmen for their approval.

(c) The Town Accountant shall keep a complete set of books indicating the amount of each specific appropriation, the amounts and purposes of expenditures made therefrom, the receipts from each source of income, and the amount of each assessment levied and the abatements made. The Town Accountant shall make an Annual Report of the same to the Selectmen to be printed in the Annual Town Report.

(d) At least once each month the Town Accountant shall send to the Selectmen and to each head of department, officer, and committee a statement of the amounts drawn against appropriations under their charge and the balance of such appropriations remaining subject to draft.

Section 6. General

In addition to the powers and duties hereinbefore set forth, the officers referred to in this Article and all other officers of the Town shall have such powers and duties as may be provided by law or specified in other Articles of these and other By-laws of the Town.

ARTICLE IV Finance Committee

Section 1. There shall be a permanent committee known as the Finance Committee, composed of seven registered voters of the Town who shall serve without pay and shall not, while serving on said Committee, hold any other Town office or committee membership, either elective or appointive, nor be in the employ of the Town, except as otherwise provided in these By-laws or as expressly authorized by vote of the Town.

Section 2. The Moderator of the Town shall within thirty days after the final adjournment of every Annual Town Meeting appoint for a term of three years either two persons or three persons, as may be necessary, to provide a committee of seven members, except that following the final adjournment of the Annual Town Meeting in 1983, the Moderator shall appoint four persons, two for terms of three years each and two for terms of two years each. The term of office of each member shall commence immediately upon qualification and shall expire upon the final adjournment of the Annual Town Meeting of the last year of such person's term of office.

Section 3. The Committee shall consider any or all municipal questions for the purpose of making reports and recommendations to the Town, and in particular shall perform the following duties:

(a) It shall prepare and submit the Annual Budget for consideration at the Annual Town Meeting, and in this connection shall hold a public hearing on said Budget

prior to the day of the Annual Town Meeting. Notice of such hearing shall be sent at least three days prior thereto by mail or otherwise to each household within the Town.

(b) It shall consider and make recommendations respecting all articles involving an expenditure of money appearing in the Warrant for any Town Meeting and shall consult with such officers and committees as it deems advisable.

(c) It shall make an Annual Report which shall be published as a part of the Annual Report of the Town and which shall include the Annual Budget and such further recommendations regarding the finances of the Town as the Committee deems advisable.

(d) It shall make such transfers from the Reserve Fund as it deems advisable to provide for extraordinary or unforeseen expenditures.

(e) It shall study the long term capital requirements of the Town and report on the same in its Annual Report to the Town.

Section 4. The Selectmen shall, as soon as may be, transmit to the Secretary of the Committee copies of all articles involving the expenditure of money which are to be included in any Warrant for a Town Meeting.

Section 5. Each Town Officer and Committee charged with the expenditure of money shall, not later than the fifteenth day of December in each year, file with the Secretary of the Finance Committee detailed estimates of the amounts deemed necessary for the administration of the respective Officer or Committee for the ensuing fiscal year with explanatory statements for the reasons for any changes in the amounts appropriated for the same purposes in the preceding year.

Section 6. In the discharge of its duty, the Committee shall have free access to all books of record and accounts, bills and vouchers on which money has been or may be paid from the Treasury. Officers and Committees of the Town shall upon request furnish said Committee with facts, figures, and other information pertaining to their several activities.

ARTICLE V Recreation Committee

Section 1. There shall be a permanent committee known as the Recreation Committee consisting of six residents of the Town whose duties shall be to plan, administer and coordinate recreational activities and facilities within the Town.

Section 2. Within thirty days after the adjournment of the Town Meeting at which this Article is adopted, the Moderator and the Board of Selectmen shall each appoint three (3) members, one for a term of three (3) years, one for a term of two (2) years, and one for a term of one (1) year. Within thirty days after the adjournment of each Annual Town Meeting thereafter the Board of Selectmen shall appoint one member for a term of three (3) years and one member shall be elected by the Town for a term of three (3) years. The Recreation Committee shall choose from among its members a Chairman, a Secretary, and such other officers as it may determine. The Chairman may appoint subcommittees to assist in carrying out the duties of the Committee.

Section 3. The Committee shall plan and administer programs and facilities which encourage broad recreational uses of leisure time. Consideration shall be given to the balance between formal and informal activities and to the advisability of making certain

programs financially self-sustaining, either wholly or in part. The Committee may adopt rules and regulations governing the use of recreational facilities under its jurisdiction.

ARTICLE VI Contracts by Town Officers

- Section 1.** No officer of the Town shall in his official capacity make or pass upon or participate in making or passing upon, any sale, contract or agreement or the terms or amount of any payment in which the Town is interested and in which such officer has directly or indirectly any personal financial interest.
- Section 2.** No Town Officer and no salaried employee of the Town, or any agent of any such officer or employee, shall receive any compensation or commission for work done by him for the Town, except his official salary and fees allowed by law, without the permission of the Selectmen expressed in a vote which shall appear on their records with the reasons therefor.
- Section 3.** No contract involving an obligation of the Town in excess of the dollar amount above which all contracts are required to be in writing pursuant to Massachusetts General Laws, Chapter 30B (as amended from time to time), shall be binding upon the Town unless such contract is in writing and is signed by the officer or a majority of the committee duly authorized or having control of the appropriation against which such obligation is incurred; and such officer or committee shall make and retain a record of every such contract.” No contract involving an obligation of the Town in excess of \$500. shall be binding upon the Town unless it is in writing and is signed by the officer or a majority of the committee duly authorized or having control of the appropriation against which such obligation is incurred; and such officer or committee shall make and retain a record of every such contract.
- Section 4.** If so requested by the officer or committee, every contract exceeding \$1,000. shall be accompanied by a suitable bond for the performance of the same, or by the deposit of money or security to the amount of such bond.
- Section 5.** That Lincoln’s authorizing authorities may solicit and award contracts for terms exceeding three years, but not more than six years, including any renewal, extension or option, provided in each instance that the longer term is determined to be in the best interest of the Town.

ARTICLE VII Legal Affairs

- Section 1.** The Selectmen shall be agents of the Town to institute, prosecute and defend any and all claims, actions and proceedings to which the Town is a party or in which the interests of the Town are or may be involved.
- Section 2.** The Selectmen may at their discretion compromise or settle any claim or suit to which the Town is a party, which does not require the payment by the Town of an amount in excess of \$5,000. No settlement of a claim or suit obligating the Town in an amount in excess of \$5,000. shall be made as authorized by law, without the consent of a Town Meeting.
- Section 3.** The Selectmen may annually after the final adjournment of the Annual Town Meeting appoint and employ a member of the bar in good standing, to serve as Town Counsel for the term of one year from the first day of April and until his successor is

appointed. The Selectmen may appoint and employ special counsel for any matter in which the Town has an interest.

Section 4. Except for matters for which a special counsel has been appointed, it shall be the duty of the Town Counsel, if any, to conduct the prosecution, defense or compromise of claims, actions and proceedings to which the Town is a party, and the prosecution of actions or proceedings by or on behalf of any Town officer or committee as such; to conduct the defense of any action or proceedings brought against any Town officer or committee as such when the Selectmen, having determined that any right or interest of the Town are or may be involved therein, shall so request; to conduct proceedings brought by or against the Assessors before the Board of Tax Appeals; to assist in the prosecution of complaints for violation of any By-law of the Town, when requested so to do by the officer or committee enforcing the same; to examine and report upon titles to all land to be acquired by the Town; upon request of the responsible Town officer or committee to prepare or approve contracts, bonds, deeds and other legal instruments in which the Town is a party or in which any right or interest of the Town is involved; to appear at any and all hearings on behalf of the town whenever his services may be required; and generally to advise and act for the Town officers and committees upon and in legal matters touching the duties of their respective offices.

ARTICLE VIII Records and Reports

Section 1. All officers and committees of the Town shall cause records of their actions taken and of their accounts to be kept in a suitable manner. Said records and accounts shall, unless otherwise provided by law, be open to public inspection at any reasonable time, but shall remain during such inspection under supervision of the officer or committee having custody thereof.

Section 2. All officers and committee of the Town having charge of the receipt or expenditure of Section_Town money shall annually report thereon in writing, referring however to the reports of the Town Accountant and Town Treasurer for the details of receipts and payments, and may make therein such recommendations as they deem proper. Such reports shall be submitted to the Selectmen for inclusion in the Annual Town Report on or before the twentieth day of January of each year.

Section 3. The Annual Town Report shall contain, in addition to the reports of officers and committees as hereinbefore provided, a detailed report of all moneys received into and paid out of the Town Treasury in the financial year next preceding; the report of the Board of Assessors including a recapitulation of the computation of the property tax rate; the report of the Collector of Taxes of receipts, payments and abatements; statements of all funds belonging to the Town or held for the benefit of its inhabitants; a statement of the liabilities of the Town on bonds, notes, certificates of indebtedness or otherwise, and of indebtedness authorized but not incurred, including the purposes thereof; a statement of transfers made to or from any appropriation; records or abstracts thereof of the meetings of the Town held in the previous year; a statement of all devises, bequests and donations to the Town during the preceding year, and such other matters as the said Report is required by other provisions of these By-laws to contain and as may be inserted by the Selectmen under the discretion granted them by law.

Section 4. The Selectmen shall from time to time cause to be printed, either separately or as a part of an Annual Town Report, the general and other By-laws and standing votes of the Town, the Assessors' valuation list, and the rules and regulations adopted by any officer or committee of the Town; and shall maintain for public inspection a list of the laws of the Commonwealth applicable to the Town by virtue of the acceptance thereof by the Town.

Section 5. The Selectmen shall cause the Annual Town report to be distributed to each household in the Town seven days at least before the Annual Meeting of the Town.

Section 6. No illustrations shall be included in reports of Town officers or committees except as they are expressly authorized by the Selectmen.

Section 7. The Annual Report of the Selectmen shall include, unless such information is included in other reports, a statement as to action taken or authorized in regard to Town ways or county ways within the Town, what damages have been assessed and paid, what claims are outstanding and what claims are in suit against the Town; it shall also give full reports in regard to suits against the Town with all the circumstances relating thereto.

ARTICLE IX Water Department

Section 1. The Water Department shall be under the supervision of Water Commissioners of which there shall be three, one elected each year for a term of three years. The Water Commissioners shall have such duties and powers as are provided in the General Laws and these By-laws.

Section 2. The Water Commissioners may appoint one or more Registrars who, shall, as directed by the Commissioners, take and tabulate a complete census of all water fixtures connected with the Town Water System, read and record all service meters at such intervals as the Commissioners may direct, and perform any other duties required by the Commissioners.

Section 3. The Water Commissioners shall, at such regular intervals in each year as they may determine, transmit the assessments for water rates to the Town Collector who shall collect the same, turn the proceeds thereof over to the Town Treasurer, and transmit statements thereof to the Town Accountant.

Section 4. A charge of two dollars or such other larger sum as the Water Commissioners from time to time may determine shall be made whenever the Water Commissioners or their representatives, at the request of the water taker, turn on or shut off the water in any service pipe.

Section 5. No extension of water mains which involves the expenditure of any funds of the Town shall be undertaken unless expressly authorized by a vote of the Town, except in the following situations: (1) if the amount to be expended is less than \$5,000, or (2) if, in the opinion of the Selectmen, an emergency exists, and the amount to be expended is less than \$10,000.00.

Section 6. No tap for service shall be made unless approved by the Water Commissioners, who may require the payment of a suitable fee for the same.

Section 7. No alteration shall be made in any of the pipes or fixtures installed by the Town except by persons authorized by the Water Commissioners who shall also be allowed to enter the premises, examine the fixtures, read the meters and ascertain if there is any unnecessary waste.

Section 8. If any person shall open a hydrant or remove the cover thereof or make any opening or connection with any Town pipe or turn on or off the water from any Town

pipe except in case of fire or by authority of the Water Commissioners or the Selectmen, he shall be liable to a fine of not more than twenty dollars.

Section 9. It shall be the duty of the Water Department to maintain the hydrants in the Town in good working order and to test them at reasonable intervals.

Section 10. Bills for water rates and charges shall be due and payable thirty days from the date shown thereon. If such bills are not paid by the due date, the provisions of Chapter 40 of the General Laws respecting the collection of such rates and charges, including the establishment of a lien and shutting off of water, shall apply.

Section 11. The Board of Water Commissioners may make abatements in the water rates and charges in such cases as the Commissioners may deem proper, and may temporarily shut off water from any street after giving notice to those affected of their intention so to do. The Commissioners shall notify the Fire Department of the Town prior to any permanent or temporary shut-off of any water main.

Section 12. The Board of Water Commissioners shall keep suitable records in which shall be entered the names of all water takers and the amounts charged, and these records shall be open to public inspection.

Section 13. The Board of Water Commissioners may make such rules and regulations governing the Water Department as they may deem advisable, not inconsistent with the By-laws of the Town or the General Laws.

Section 14. Water Supply

(a) Purpose

The purpose of this Section 14 is to protect, preserve, and maintain the public health, safety and welfare whenever there is in force a state of water supply emergency by providing for enforcement of any restrictions, requirements, provisions or conditions imposed by the Town or by the Department of Environmental Protection and included in the Town's plan approved by the Department of Environmental Protection to abate the emergency.

(b) Definitions

For the purpose of this Section 14:

enforcement authority shall mean the Town police and special police.

state of water supply emergency shall mean a state of water supply emergency declared by the Department of Environmental Protection pursuant to G.L. c. 21G, S15, G.L. c. 111, S160, or by the Governor.

(c) The following shall apply to all users of water supplied by the Town of Lincoln:

Following notification by the Town of the existence of a state of water supply emergency, no person shall violate any provision, condition, requirement or restriction included in a plan approved by the Department of Environmental Protection which has as its purpose the abatement of a water supply emergency in the Town.

Notification of any provision, restriction, requirement, or condition with which users of water supplied by the Town are required to comply to abate a situation of

water emergency shall be sufficient for purposes of this By-law if it is published in a newspaper of general circulation within the Town or by such other notice as is reasonably calculated to reach and inform all users of the Town's supply.

(d) Penalty

Any person or entity who violates this Section 14, shall be liable to the Town in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation which shall inure to the Town. Fines shall be recovered by indictment or on complaint before the District Court or, at the discretion of the enforcement authority, by noncriminal disposition in accordance with **Article XVI** of these By-laws. Each separate instance of noncompliance following the issuance of any warning or citation pursuant to this section shall constitute a separate violation.

(e) Right of Entry

Agents of the enforcement authority may enter any property for the purpose of inspecting or investigating any violation of this Section 14 or enforcing against the same.

(f) Severability

The invalidity of any portion or provisions of this Section 14 shall not invalidate any other portion or provision hereof.

ARTICLE X Cemeteries

Section 1. The cemeteries of the Town shall be under the supervision of Cemetery Commissioners of which there shall be three, one elected each year for a term of three years. The Cemetery Commissioners shall have such duties and powers as are provided in the General Laws and in these By-laws.

Section 2. The Cemetery Commissioners shall have charge of the maintenance and upkeep of the cemeteries in the Town, and shall make such rules and regulations respecting the cemeteries as they shall deem desirable.

Section 3. The Town shall accept and forever hold in trust any gift or bequest for the perpetual care, preservation, improvement, embellishment or enlargement of any public or private burial place, or any lots or graves therein, which gifts or bequests shall be paid into the Town Treasury. Said gifts and bequests shall be invested and the income therefrom expended as provided in the General Laws.

Section 4. Sale of unsold lots in the cemeteries of the Town shall be in accordance with the regulations of and at prices determined by the Cemetery Commissioners, and deeds for the same shall be delivered to the purchasers thereof by the Commissioners when payment has been completed. Proceeds of such sales shall be paid into the Town Treasury and shall be held separate from other funds of the Town pending appropriation for cemetery purposes by the Town in accordance with the General Laws.

ARTICLE XI MISCELLANEOUS

Section 1. Firearms and explosives

No person shall fire or discharge any firearms or explosives of any kind within the limits of any highway, park, or other public property, or on or over any private property

except with the consent of the owner or legal occupant thereof, provided, however, that this By-law shall not apply to the lawful defense of life or property nor to any law-enforcement officer acting in the performance of his duties, nor to fireworks displays authorized by vote of the Town. Any person violating this By-law shall be punished by a fine of not more than twenty dollars.

Section 2. Town Seal and Sealed Instruments

(a) The design of the Town Seal shall be: a circle, in the border the words "Lincoln. Incorporated in 1746 as a precinct; in 1754 as a Town"; in the center, a shield, in the chief or upper part of which on a cross, gules, a fleur-de-lis, gold, from the old seal of Lincoln, England, and in the base of the shield a view of the present Town Hall; crest, the old chestnut tree standing upon the common in Lincoln; in saltire two shepherd's crooks.

(b) All deeds and other legal documents made, given or entered into by the Town requiring a seal shall be sealed with the Town Seal, and signed in behalf of the Town by a majority of the Selectmen or other appropriate authority.

Section 3 Public Ways

(a) Names of the public way of the Town shall not be changed except by vote of the Town.

(b) No person shall place any obstruction in a public way and allow it to remain there, or break or dig up, or aid in breaking or digging up, any part of any street, or remove any earth or gravel therefrom, without having first obtained a written license from the Selectmen for that purpose.

Section 3A. Public Way Access Permits

A. Purpose

It is the purpose of this By-law to provide for the review of public way access permit applications and to establish procedures for the predictable, timely, and uniform review of such applications so as to ensure public safety. These procedures apply to public way access permit applications for: (1) new access to a public way; (2) physical modification to existing access to a public way; (3) use of new or existing access to serve the building or expansion of a facility or use that generates a substantial increase in or impacts on traffic on a public way. Such procedures shall not be construed to apply to State owned ways according to Massachusetts General Laws Chapter 81, section 21.

B. Definitions

In this By-law, the following terms shall have the meanings prescribed below: (1) "Modification" shall mean any alteration of the physical or traffic operational features of the access. (2) "Substantial" increase or impact on traffic shall mean that generated by a facility which meets or exceeds any of the following thresholds: (a) Residential, including hotels, motels, lodging houses and dormitories: any increase to the existing certificate of occupancy of more than 25 persons; (b) Nonresidential: 250 trips per day as defined in the ITE Trip Generational Manual, 4th Ed.; (c) Nonresidential: 25 new parking spaces; (d) Nonresidential: 5,000 new square feet.

C. Submittal of Permit Application

The Board of Selectmen shall be responsible for the issuance and/or denial of public way access permits. A permit applicant shall request issuance of a permit on a standard form, supplied by the Board of Selectmen. A permit shall be limited to a single curb cut, unless expressly authorized by the Board of Selectmen following recommendation of the Planning Board. A permit application shall be deemed complete by the Board of Selectmen only after the following items have been submitted: (1) standard application form; (2) evidence of compliance with the Massachusetts Environmental Policy Act by the Executive Office of Environmental Affairs of the Commonwealth, if determined to be necessary; (3) where required by the Board, engineering plans shall be submitted showing: (a) the location of the property, any driveway that is to be created, altered or closed, and the intersection of the driveway with the Town way; (b) specific details of drainage affecting the Town way; (c) specific provisions to minimize slope or soil erosion when required; (d) specific provisions to protect existing trees and vegetation in the public right of way and on any land owned by the Town; and (e) such other information, including a traffic or engineering review conducted at the expense of the applicant, as may be requested.

The Board of Selectmen, by regulation, may adopt a schedule of reasonable fees to accompany said application.

D. Procedures of the Board of Selectmen

(1) Any application for a public way access permit, other than an application pertaining to a single-family residential structure, shall be transmitted by the Board of Selectmen within three (3) working days to the Planning Board for review and comment. The Planning Board shall, within twenty (20) days of receipt of the application, report to the Board of Selectmen in writing its findings as to the safety of the proposed activity and, in the event of a finding that the proposed activity would be unsafe, its recommendations, if possible, for the adjustment thereof. Failure by the Planning Board to respond within twenty days of the receipt of the application shall be deemed lack of opposition thereto.

(2) Where an application is deemed complete, the Board of Selectmen shall render a decision within the following timetable, by filing same with the Town Clerk: (a) for an application pertaining to a single-family residential structure: twenty (20) days; (b) for any other application: forty (40) days.

Where the Board of Selectmen denies said application, it shall state specific findings for the denial in its decision.

E. Powers of the Board of Selectmen

(1) The Board of Selectmen may deny the issuance of a public way access permit due to the failure of the applicant to provide sufficient roadway improvements to facilitate safe and efficient roadway operations, or when the construction and use of the access applied for would create a condition that is unsafe or endangers the public safety and welfare. The Board of Selectmen may also deny or condition a public way access permit if the applicant fails to comply with the design guidelines set forth in section G.

(2) The Board of Selectmen may, in the alternative, impose conditions upon an access permit to facilitate safe and efficient traffic operations, to mitigate traffic impacts, and to avoid or minimize environmental damage during the construction period and throughout the term of the permit. Such conditions may include, but not be limited to: (a) necessary limitations on turning movements; (b) restrictions on the number of access points to serve the parcel; (c) vehicle trip reduction techniques; (d) necessary and reasonable efforts to maintain existing levels of service; (e) design and

construction of necessary public way improvements by the permittee; (f) reimbursement by the permittee of costs to Town inspection of public way improvement work.

(3) Variance. Where site or access standards do not allow the proposed access to meet these standards, the Board of Selectmen may vary application of the design standards on a case by case basis, upon the finding that: (a) for either a private applicant or a governmental entity, where there are no reasonable available alternatives which would allow access in compliance with these standards. In this case, the applicant must commit to provide measures to mitigate impacts to traffic and operational safety which the Board of Selectmen determines are necessary; or (b) as an alternative procedure for a governmental entity only, the variance is necessary to accommodate an overriding municipal, regional, or state public interest, including the avoidance of minimization of environmental impacts.

F. Access Permit Provisions

(1) Construction under the terms of a public way access permit shall be completed within one year of the date of issue, unless otherwise stated in the permit. The Board of Selectmen may extend the permit for an additional year, at the written request of the permittee, filed prior to the expiration of the original construction period.

(2) When the Board of Selectmen determines that a permit condition has not been complied with, it may suspend or revoke a public way access permit if, after notice to the permittee of the alleged noncompliance, twenty-four hours have elapsed without compliance.

(3) The Board of Selectmen may require a performance bond to be posted by the permittee in an amount not to exceed the estimated cost of the work or \$50,000.00, whichever is the lesser. The performance bond shall be posted prior to the issuance of the permit.

(4) The Board of Selectmen may issue written orders or regulations to carry out or enforce the provisions of this bylaw.

G. Design Guidelines

In deciding whether to approve an application for a public way access permit, the Board of Selectmen and Planning Board shall be guided by the design requirements set forth in this section and in section E. The Board of Selectmen may consult with the Building Inspector, Zoning Board of Appeals, or Planning Board with regard to whether the applicant has complied with the design guidelines. A public way access permit may be denied for failure to meet any of the standards set forth below, as well as for the reasons stated in section E. (1), or may be conditioned by the Board of Selectmen as provided in section E. (2), or to ensure that the below standards are met.

1. Design and location of curb cut shall minimize traffic hazards.
2. Design and location of curb cut shall prevent slope/soil erosion.
3. Design and location of curb cut shall provide adequate drainage.
4. Design and location of curb cut shall protect existing trees and vegetation in the public right of way and on any land owned by the Town; if an applicant cannot meet this requirement, the Board of Selectmen may require compensatory and/or replacement action.
5. Design and location of curb cut shall be compatible with local conditions and shall be harmonious with the character of the neighborhood and with local road design.

6. One access permit may be allowed per lot. An additional access permit may be allowed only if, in the opinion of the Board, there is a clear necessity for more. A clear necessity may be demonstrated by showing that an additional cut would materially improve safety for vehicular traffic or pedestrians using the site or traveling on adjacent public ways, or, that a secondary curb cut for emergency vehicular access only is desirable. Leasing of a portion of the property shall not affect this requirement. If a number of establishments will be constructed on one parcel, a service road may be required to connect with an allowable exit and entrance with the approval of the Board of Selectmen.
7. Common or shared driveways are favored.
8. Driveways shall not normally be approved at intersections of Town ways, particularly an intersection with signals, because of the potential safety hazard which arises when a driver enters a road from a corner driveway and is not faced with a direct signal indication. Access directly into a rotary is also discouraged.
9. The maximum width of a residential curb cut shall be 12' feet measured at the property line. The maximum width of a commercial curb cut shall be 15' measured at the property line. The Board of Selectmen may increase the maximum width of a residential curb cut and a commercial curb cut to 15' and 25', respectively, if it finds that:
 - (a) A larger curb cut is needed to accommodate commercial vehicles; and
 - (b) A larger curb cut is demonstrated not to cause danger to vehicles or pedestrians using the town way and vehicles entering and exiting the property; and
 - (c) The property will not generate traffic which will lower levels of service on the Town way or at any nearby intersection below a level of service C at peak hour.
10. No curb cut shall be located closer than 25 feet to a street or road intersection or within 15 feet of a crosswalk.

H. Penalties

Whoever by him/herself being the owner or occupant, or by his/her agents or servants, violates this by-law shall be punished by a fine of \$300.00 per day, and shall be liable in tort to the Town of Lincoln for all damages caused thereby, and for the cost and expense of removing the obstructing material and of restoring said way to its former condition.

Every day on which any violation of this by-law exists is deemed to be a separate and continuing offense, subject to the penalty as stated herein.

I. Exceptions

1. Driveways already in existence
2. Driveways reviewed in the first instance by municipal boards under other existing bylaws (e.g., Scenic Roads bylaws, Subdivision Approval and site plan review).

Section 4. Removal of Vehicles from Public Ways

Any vehicle on a public way in the Town interfering with the removal of snow or ice, may be towed or otherwise removed by or under the direction of the Superintendent of the Highway Department to a public garage or any convenient place. Said Superintendent shall, within a reasonable time, notify the Chief of Police of the removal of such vehicle and of the place to which it has been removed, and the Chief of Police shall give like notice to the registered owner of the vehicle. The owner shall pay the cost of removal not exceeding ten dollars and any storage charges resulting therefrom.

Section 5. Peddlers

No person shall sell, display or advertise for sale any articles, goods, wares or merchandise of any description whatsoever within the limits of any public way, park or other public property without a written permit from the Selectmen. No permit shall be granted by the Selectmen unless they determine the same to be in the public interest and not injurious to the health, safety and welfare of the inhabitants of the Town. Each such permit shall stipulate the term thereof and such other provisions as the Selectmen may determine, and a charge not exceeding ten dollars per day may be levied for issuing the same. No permit may be granted which is in conflict with the Zoning By-laws of the Town.

Section 6. Junk Dealers

No person shall collect, deal in, or keep a shop for the purchase, sale or barter of junk, old metals or second-hand articles within the limits of the Town, unless licensed by the Board of Selectmen.

Section 7. Billboard and signs

Section eliminated March 28, 1998.

Section 8. Vacancies in Office

Unless otherwise provided in these By-laws, governing instrument, or the General Laws, vacancies in any elected office of the Town shall be filled by the Selectmen, and vacancies in any appointive office shall be filled by the person or persons having the authority to make appointments to such office.

Section 9. Motorboats

(a) No motorboat shall be operated upon any portion of the Concord River or its tributaries or of any inland lake or pond lying within the Town in a manner which endangers the safety of the public or is detrimental or injurious to the neighborhood or to the value of the property thereon.

(b) It shall be prima facie evidence of the violation of this By-law if such boat is operated by a motor not having an underwater exhaust, or in a noisy or obnoxious manner, or at any unreasonable rate of speed, or without slowing down and exercising due caution while approaching and passing persons bathing or any other watercraft, or at any speed in excess of ten miles per hour.

(c) Any person violating any provision of this By-law shall be subject to a fine not exceeding \$20.00 for each offense.

(d) The Town may join with any other town, through which said Concord River or any of its tributaries flows in the enforcement of this By-law or a similar By-law adopted by such other towns insofar as such By-laws relate to said river or its tributaries, and may appropriate money for the enforcement of this in whole or in part of any and all such By-laws.

Section 10. Inspector of Gas Piping and Gas Appliances

The Board of Selectmen shall in each year appoint an inspector of gas piping and gas appliances in buildings, whose duty shall be the enforcement of the rules and regulations adopted by the Board established by General Laws, Chapter 25, Section 12 (h), inserted by Section 1 of Chapter 737 of the Acts of 1960, and amendments thereto.

Section 11. Motor Vehicles, Snow Vehicles and Recreation Vehicles

No person shall use or operate a motor vehicle, trail bicycle, motor bicycle or similar motorized vehicle which is eligible for registration under Chapter 90B of the General Laws of the Commonwealth, or a snow vehicle or recreation vehicle as defined in Section 20 of said Chapter in any park or other Town owned property, except public roads and streets, without the prior written consent of the Town Board having the responsibility for the management of such property. Any such consent shall be temporary in nature, shall specify the period of time during which it is in force and shall only be granted where the proposed use or operation will not in the judgment of the Board granting the same be detrimental to the purpose for which such property is owned. Notwithstanding anything to the contrary hereinabove contained, parking areas established for use in connection with such park or such other public property may be used for parking purposes without prior consent.

No person shall use or operate any such vehicle on or over any private property within the limits of the Town without the written consent of the owner of such property.

Any person violating this By-law shall be punished by a fine of not less than five dollars nor more than fifty dollars.

Section 12. Bicycle Lanes

Wherever it exists within the Town, a bicycle path is hereby designated as a bicycle lane within the meaning of Clause 16B of Section 21 of Chapter 40 of the General Laws. Every person operating a bicycle within the Town shall, wherever a bicycle path exists, and whenever requested to do so by a police officer because of traffic conditions, ride on such path and not on the street portion of the way. Any person in violation of this section may be punished by a fine of not more than \$20 for each offense.

Section 13. Dog Regulations

(a) Purpose

All citizens are entitled to fully enjoy their property and the public ways and lands. Those citizens who own or keep animals are entitled to enjoy their animals, but only to the extent that they exercise responsibility so that their animals do not unreasonably impinge upon the activities of other persons.

(b) Definitions

As used in this by-law, the terms set forth below shall have the following meanings:

Owner: Any person or persons, firm, association or corporation owning, keeping or harboring a dog within the Town.

Kennel: One (1) pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes, and also including every pack or collection of four (4) or more dogs, six (6) months old or older, owned or kept by a person on a single premise, irrespective of the purpose for which they are maintained.

License Period: From January 1st of each year to December 31st of the same year.

Animal Shelter: Any premises designated for the purpose of impounding and caring for animals held under authority of this by-law.

(c) Dog Officer

The Board of Selectmen shall annually appoint a dog officer under the provisions of Sec 151 and Sec 151A to carry out the provisions of this by-law, issue citations for violation of any provisions hereof, and perform such other duties and responsibilities as the Board may determine. The dog officer shall seek out and notify all owners of all dogs within the Town that have not been licensed within the required time under the provisions of this bylaw; it shall be the duty of the dog officer to keep, or cause to be kept, accurate and detailed records of the impoundment and disposition of all dogs held in custody; all complaints or calls regarding dogs and all bite cases reported and the investigation of same, and to submit periodic reports to the Board of Selectmen.

(d) Registration, licenses and fees

Any owner of a dog which at the commencement of a license period is six (6) months of age or older and is located in the Town of Lincoln shall obtain a license for that dog commencing on January 1 of each year. An owner of a dog which becomes six (6) months old during a license period, or a person who becomes an owner of a dog six (6) months of age or older during a license period shall in each such case also be obligated to obtain a license for such dog for the remainder of the relevant license period.

License fees for all dogs, male, female, neutered or spayed shall be ten dollars (\$10.00) annually. Overdue fees shall increase to fifteen dollars (\$15.00) if not paid on or before April 1. If any tag shall be lost, the owner of such dog shall forthwith secure a substitute tag from the Town Clerk. The fee for a duplicate tag shall be one dollar (\$1.00). A valid rabies certificate must be presented each time a dog is licensed.

Any person maintaining a kennel shall obtain a kennel license from the Town Clerk commencing on January 1 of each year. The annual fee for kennel licenses shall be:

Four (4) dogs	\$25.00
Five (5) or more dogs	\$50.00

Any dog which is the subject of a kennel license shall not be required to have an individual license during the relevant license period.

(e) Vaccination Requirement

The owner of a dog six months of age or older shall cause such dog to be vaccinated against rabies by a licensed veterinarian using a vaccine approved by the Department of Public Health. Such owner shall produce a veterinarian's certificate that such dog has been so vaccinated setting forth the date of such vaccination and the duration of immunity, and shall also attach a vaccination tag to such dog's collar or harness. Vaccinated animals shall be revaccinated periodically in accordance with rules and regulations adopted and promulgated by the Massachusetts Department of Public Health.

(f) Conduct of Dogs; Restraint

- (i) No person shall keep in the Town any dog which, by biting, by howling or excessive barking, or in any other manner, endangers the safety of any person or disrupts the peace or quiet of any neighborhood.

- (ii) No person shall allow a dog owned or kept by him to be in any municipal building unless the dog is kept on a leash.
- (iii) No person shall allow a dog owned or kept by him to be in a school building or on school grounds between thirty minutes before and thirty minutes after the hours when any school or recreation program is in session, unless the cognizant authority otherwise specifically permits.
- (iv) The dog officer shall order the restraint and/or muzzling, for a period not to exceed thirty (30) days, of any animal which the officer finds, after a complaint from an identified person or through the dog officer's own observation, has:
 - (A) Bitten or threatened the safety of any person
 - (B) Worried, killed or maimed any domesticated or farm animal;
 - (C) Chased any motor, recreational or pedal vehicle, or any animal carrying or drawing a person upon any public or traveled way;
 - (D) Damaged property; and/or
 - (E) Committed any act which places its owner or keeper in violation of a prior subsection of this by-law.

The second time the dog officer issues a restraining order or muzzling order regarding the same animal on account of a repeated offense under this subsection, the dog officer shall notify the Selectmen in writing so that they may take any further action.

The owner or keeper of any animal that has been ordered to be restrained or muzzled under the provisions of this subsection may request the Selectmen in writing to vacate such order.

(g) Penalties

The owner or keeper of any animal who fails to comply with this by-law shall be subject to the following penalties:

First offense:	maximum fine of \$25.00
Second offense:	maximum fine of \$25.00
Third offense:	maximum fine of \$35.00
Fourth and subsequent offenses:	maximum fine of \$50.00

In addition, for each offense the owner or keeper of the animal shall be subject to the following charges:

Reimbursement to the dog officer of the dog officer's expenses for maintaining the animal, if the dog officer finds it necessary to impound the animal until its owner or keeper can be found. Such expenses must be paid prior to release of the impounded animal.

Before release of an unlicensed dog is made by the dog officer, the officer shall require that a license be secured. A late fee of five dollars \$5.00 shall be paid to the Town, in addition to the regular license fee, in such instance.

The Town Clerk shall receive payment of such penalties and charges and remit the same to the Town's General Fund.

(h) Enforcement

The Board of Selectmen, or the dog officer as the Board's designee, shall enforce, by means available under the General By-laws of the Town or Massachusetts General Laws, the violation of any provision of this by-law.

(i) Severability

Each part of this by-law shall be construed as separate to the end that if any part or sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that part and all other parts of the by-law shall continue in full force.

Section 14. Tree Warden

Upon the expiration of the Tree Warden's term of office in 1984, that office shall thereafter be filled by appointment by the Selectmen, who shall annually appoint a Tree Warden for a term of one year.

Section 15. Recycling

All Lincoln residents or other persons using the Town's transfer station facility shall comply with all requirements imposed by the Selectmen from time to time for the physical separation and separate disposal of recyclable waste materials. Categories for such mandatory recycling may include, but are not limited to: glass, cans and other metal, paper and newspaper, leaves and grass clippings or other yard wastes, and other wastes.

Section 16. Denial, Revocation or Suspension of Certain Licenses and Permits for Nonpayment of Taxes, Fees or charges

(a) The Town Collector shall, on an annual basis, furnish to each department, board or commission ("licensing authority") that issues licenses or permits, including renewals and transfers, a list of any person, corporation, or business enterprise that has neglected or refused to pay any local taxes, fees, assessments, betterments, or other municipal charges including amounts assessed under the provisions of Chapter 40, Section 21D of the Massachusetts General Laws for not less than a twelve-month period, and has not filed in good faith a pending application for an abatement of such tax or a pending petition before the Appellate Tax Board.

(b) The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the Town Collector or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the Town Collector; provided, however, that written notice is given to the party and the Town Collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Town Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing authority receives a certificate issued by the Town Collector that the party is in good standing with respect to any and all local taxes, fees,

assessments, betterments or other municipal charges payable to the Town as of the date of issuance of said certificate.

(c) Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

(d) The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined by Massachusetts General Laws Chapter 268A, Section 1, in the business or activity conducted in or on said property.

(e) This by-law shall not apply to the following licenses and permits: open burning permits; bicycle permits; sales of articles for charitable purposes; children work permits; clubs or associations dispensing food or beverage licenses; dog licenses; fishing, hunting and trapping licenses; marriage licenses; and theatrical events and public exhibition permits.

ARTICLE XII Personnel Board

Preamble.

Recognizing that an important ingredient in the character of its Town is provided through the harmonious and cooperative efforts of residents, town officials, and employees, the citizens of Lincoln hereby adopt this Personnel Board By-law. It is the objective of this By-law to provide a framework wherein members of the board as established through this By-law act with the consent of the Selectmen to:

(1) Provide working conditions, compensation, and benefits that are consistent, fair, and reasonable to all employees falling within the purview of the By-law.

(2) Provide the mechanism for those Town departments not falling directly under the provisions of this By-law to avail themselves of the resources and experience of Board Members in the above areas.

(3) Provide a forum for the exchange of ideas, opinions, and grievances relative to personnel matters for all citizens, employees, and officials, and to act at all times to maintain helpful channels of communication between all levels of the Town.

(4) Continue to examine matters of personnel policy and practice with an eye toward improving the capability and productivity of Town employees and the opportunities open to them, and to ensure that policy and practice are designed to attract to the Town employees of the highest caliber.

Section 1. Application

(a) All Town departments and all positions in the Town service, other than those of the School Committees and positions under its control, shall be subject to the provisions of this By-law, provided, however, that the compensation of elected officers of the Town shall be established annually by vote of the Town Meeting. The terms "personnel" and "employees" as used in the following sections include only employees of the above departments. If either of the School Committees votes to have certain of

its employees come under the provisions of this By-law, they shall be so included under these terms.

(b) In any case, the Personnel Board and the School Committees shall confer from time to time about and exchange information on wages, salaries, hours, and conditions of employment of Town employees, exclusive of the professional employees under the School Committees, and shall cooperate for the prevention of inequalities and salary and wage competition between departments which, in the judgment of said Board and Committees, may prove detrimental to the interest of the Town.

Section 2. Purpose

(a) The purpose of the Personnel Board is to strive to ensure fair and equitable wages, personnel policies and working conditions for all Town employees and to assist Town departments in the administration of personnel policy.

(b) To carry out these functions, the Personnel Board shall recommend appropriate wage classifications and salary schedules for particular jobs and remuneration of particular individuals. To these ends, it may recommend the procedures for the development of appropriate job descriptions.

(c) In addition, the Personnel Board shall recommend policies regarding fringe benefits such as health and life insurance, governing remuneration for overtime work training and professional development in both administrative and operating skills, and procedures for promotion, demotion, and transfer, and all other matters normally considered facets of personnel policy.

Section 3. Personnel Board

(a) There is hereby established an unpaid Personnel Board consisting of three members to be appointed by the Moderator. Each member shall serve for a term of three years; and each shall serve until his successor has qualified, except the initial members whose terms shall be for one, two, and three years.

(b) No person shall serve upon said Personnel Board who holds an elective Town office, or who is a member of any other permanent Town committee, board, or commission, if his position involves supervision of any employees, whether full or part-time.

(c) If any member of the Personnel Board shall resign or otherwise vacate his office before the expiration of his term, his successor shall be appointed, as provided above, to serve for the balance of the unexpired term. Original appointments to the Board under this By-law shall be made not later than thirty days following the effective date of the By-law, and subsequent appointments shall be made not later than thirty days following the expiration of the term of the Board member who is to be replaced.

(d) The Personnel Board is hereby authorized to administer the provisions of this By-law except for such duties as may be specifically assigned by statute for Town By-law to other Town officers, boards, or committees. It shall also have the authority to decide all questions regarding the application of this By-law.

(e) The Personnel Board shall annually, not later than thirty days following the Annual Town Meeting, elect its own Chairman and Secretary and shall establish its own rules of procedure. The Board shall keep a record of its official actions, which shall be kept open for public inspection and, subject to appropriation therefor, may make such expenditures as may be necessary for the performance of its duties.

(f) The Personnel Board shall meet regularly, as it shall determine in its rules, for the transaction of business under this By-law, and it may hold such special meetings as may be called by the Chairman or Secretary or directed by vote of the Board. Reasonable notice of all meetings shall be given to all members of the Board. A majority of the total membership of the Board shall constitute a quorum for transaction of business of the Board.

(g) The Personnel Board may from time to time issue, amend, or revoke administrative orders for the purpose of giving effect to the provisions of this By-law and such other By-laws and votes of the Town pertaining to personnel administration as the Board may be responsible for administering. Each such order shall be numbered in sequence and the Board shall maintain in its office a file of such orders issued, said file to be open to public inspection.

(h) Except as otherwise provided by law the Personnel Board shall have access to all facts, figures, records, and other information related to the personnel of Town departments subject to the provisions of this By-law, and the same shall be furnished forthwith by any such department whenever so requested by the Board, in such form as the Board may require.

(l) The Personnel Board from time to time, of its own motion, shall review and investigate the work content, standard rates of compensation, and fringe benefits of all positions in the Town departments subject to the provision of this By-law and make such other investigations of the conditions of employment of Town employees, as it deems necessary and proper, and it may investigate any complaint relative to the amendment of this By-law, including the compensation of Town employees, as it deems necessary and proper.

Section 4. Grievances

There is hereby established a grievance procedure available to any employee, including any department head, of the Town, whose rights under this By-law have, in his or her opinion, been prejudiced in any way, or who shall have a dispute with his or her department head, or supervisory body, arising out of the actions of such supervisor.

In the case of an employee other than a department head: such employee shall take up a grievance orally with his or her department head. If the employee wishes to have the grievance reviewed, he or she shall then submit it in writing to said department head. The department head shall then reply in writing within 7 days. If the department head's response is not to the employee's satisfaction, the employee may send, within 7 days of the date of such response, a copy of said grievance to the Personnel Board. In the case of a department head: such department head who wishes to have a grievance reviewed shall submit it in writing to the Personnel Board, with a copy to his or her supervisory board or committee. In either case, the Board, within 14 days after receipt of any such grievance, shall hold a hearing at which both parties to the grievance shall be present. The Board's decision shall be rendered within 14 days of the hearing and in both cases shall be final.

Section 5. Severance Clause

The provisions of this By-law are hereby declared to be severable, and if any provision and the application of any such provision to any person or circumstances shall be held to be invalid, illegal, or unconstitutional, such invalidity, illegality, or unconstitutionality shall not be construed to effect the validity, legality, or constitutionality of any of the remaining provisions for the application of this By-law to persons or circumstances other than those as to which it is held invalid, illegal, or unconstitutional.

ARTICLE XIII Town Building Committee

Article rescinded April 5, 1986.

ARTICLE XIV Celebration Committee

There shall be a permanent committee known as the Celebration Committee to consist of five members to be appointed by the Board of Selectmen: two for one year, two for two years, and one for three years; thereafter, as each term expires, a successor shall be appointed for a three-year term.

ARTICLE XV Council on Aging

There shall be established a Council on Aging for the purpose of coordinating and carrying out programs designed to meet the needs of older citizens, pursuant to the provisions of General Laws, Chapter 40, Section 8B. The Council shall consist of not less than nine nor more than twelve residents of this Town to be appointed by the Selectmen. Terms shall not exceed three (3) years, and shall be staggered so that no more than four appointments shall be made in any calendar year, except the first year. Officers of the Council shall be elected by the Council from its membership.

ARTICLE XVI Non Criminal Disposition of Violations

Any Bylaw of the Town of Lincoln or rule or regulation of its Board, Commissions and Committees, the violation of which is subject to a specific penalty, may, in the discretion of the Town official who is the appropriate enforcing person, be enforced in the method provided in Section 21D of Chapter 40 of the General Laws, NON CRIMINAL DISPOSITION OF CERTAIN VIOLATIONS. Enforcing person as used in this Bylaw shall mean any Selectmen and any police officer of the Town of Lincoln with respect to any offense; the Building Inspector and his designee, the Conservation Commission and its designees, the Board of Health and its designees, and any such other official as the Board of Selectmen may from time to time designate, each with respect to violations of Bylaws and rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any official may be an enforcing person with respect thereto.

ARTICLE XVII Scenic Roads

Section 1. Purpose

The Scenic Roads Act, M.G.L. Chapter 40, Section 15C, allows town meeting to designate scenic roads.

The effect of designation as a scenic road is that planning board approval is required before trees can be cut or removed, or stone walls can be torn down or destroyed, if this is done in connection with repair, maintenance, reconstruction or paving of a scenic road.

Scenic road designation does not require planning board approval for trimming or other cutting of trees, or destruction of stone walls, unless related to roadway work. It also does not require planning board approval for roadway work which does not affect trees or stone walls.

These regulations are intended to ensure that:

1. ways will be recommended for designation as scenic roads according to stated criteria; and

2. trees and stone walls in the rights-of-way of scenic roads will not be destroyed without following proper procedures.

Section 2. Definitions

The following terms used in the Scenic Roads Act, M.G.L. Chapter 40, Section 15C, shall be defined as follows for purposes of applying that statute in the Town of Lincoln.

Section 2.1. "Cutting or Removal of Trees"

"Cutting or removal of trees" shall mean the removal of one or more trees, cutting of major branches or cutting of roots.

Section 2.2. "Repair, Maintenance, Reconstruction, or Paving Work"

"Repair, maintenance, reconstruction, or paving work" shall mean any work done within the right-of-way of a scenic road by any person or agency, public or private. Construction of new driveways, bicycle paths or roadside paths, or alteration of existing ones, is also included, in so far as the work takes place within the right-of-way. Construction or alteration of water, sewer, electric, telephone, cable t.v. or other utilities within the right-of-way is also included.

Section 2.3. "Road"

"Road" shall mean the right-of-way of any way used and maintained as a public way, not just the paved surface. When the boundary of a scenic road is in issue so that a dispute arises as to whether or not certain trees or stone walls or portions thereof are within the scenic road, the trees or stone walls shall be presumed to be within the way until the contrary is shown. Trees and stone walls located on the boundary line of a scenic road shall be covered by this Bylaw.

Section 2.4. "Tearing Down or Destruction of Stone Walls"

"Tearing down or destruction of stone walls" shall mean the removal of more than two (2) linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade. Temporary removal and replacement at the same location with the same materials is permitted without planning board approval if the Town Department of Public Works is notified before the work begins so that it can confirm that the wall is properly replaced. Repair of a stone wall, not involving tearing down or destruction of the wall, is not covered by this Bylaw.

Section 2.5. "Trees"

"Trees" shall mean a tree whose trunk has a diameter of four inches or more as measured one foot above the ground.

Section 3. Criteria for Designation as a Scenic Road

The planning board, conservation commission, or historical commission shall, in determining which roads or portions of roads should be recommended for designation as scenic roads, consider the following criteria:

1. overall scenic beauty;
2. contribution of trees to scenic beauty;
3. contribution of stone walls to scenic beauty;

4. age and historic significance of road, trees and stone walls.

Section 4. Notification of Designation as Scenic Road

Upon the designation by Town Meeting of any road or portion as a scenic road, the planning board shall take the following steps within 30 days of such designation:

1. notify all municipal departments that may take any action with respect to such road;
2. notify the State Department of Public Works;
3. notify the Commissioners of Middlesex County;
4. indicate such designation on maps currently in use by municipal departments, as appropriate; and
5. notify all utility companies or other parties which may be working in or around such road.

Section 5. Procedures

Section 5.1. Filing

Any person, organization, state or municipal agency seeking the written consent of the planning board, regarding the cutting or removal of trees or the tearing down or destruction of stone walls within the right-of-way of a scenic road shall file a request with the planning board, together with the following:

1. the text of a legal notice identifying the location of the proposed action in terms enabling readers to locate it with reasonable specificity on the ground without need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls;
2. a statement of the purpose, or purposes, for the proposed action;
3. a statement of the feasible alternatives to the proposed action, together with an indication of the advantages and disadvantages of each alternative;
4. a list of the assessed owners of properties located in whole or in part within 200 feet of the proposed action;
5. except in the case of town agencies, a deposit sufficient to cover the cost of advertising and notification; and
6. any further explanatory material useful to adequately inform the planning board.

Section 5.2. Notice

The planning board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area. This notice shall contain a statement as to the time, date, place, and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the selectmen, the conservation commission, the historical commission, the municipal engineer, the tree warden, the state department of public works, and the assessed owners of property within 200 feet of the proposed action.

Section 5.3. Timing of Notice

The first publication of the notice shall be as soon as feasible after the planning board receives the request from the applicant, and shall in all cases be at least 14 days before the hearing. The last publication shall occur, as required by statute, at least seven days prior to the hearing.

Section 5.4. Timing of Hearing

The planning board shall hold a public hearing within 30 days after the planning board meeting at which a properly filed request is received. The date and time of the public hearing shall be set outside of normal weekday work hours (8:00 a.m. - 5:00 p.m., Monday - Friday) so as to encourage maximum citizen participation.

Section 5.5. Timing of Decision

The planning board shall make a decision on the request within 21 days after the public hearing. If the planning board fails to mail or deliver to the applicant a copy of its decision within this time period the requested approval shall be deemed granted.

Section 5.6. Public Shade Tree Act

Whenever both the Scenic Road Act and the Public Shade Tree Act (M.G.L. Ch. 87) apply, notice shall be given and the planning board hearing shall be held in conjunction with the hearing held by the tree warden acting under the Public Shade Tree Act. The consent of the planning board to a proposed action shall not be regarded as implying consent by the tree warden, or vice versa. The planning board decision shall contain a condition that no work may be done until all applicable provisions of M.G.L. Ch. 87 have been complied with.

Section 5.7. Historic District Commission

Whenever feasible, notice shall be given and planning board hearings shall be held in conjunction with those held by the Historic District Commission with respect to repair, maintenance, reconstruction or paving work proposed to be done in the Historic district. The consent of the planning board to a proposed action shall not be regarded as implying consent by the Historic District Commission, or vice versa.

Section 5.8. Approval of Curb Cuts by Selectmen

The consent of the planning board to work involving a proposed curb cut shall not be regarded as implying consent by the Selectmen to such curb cut, or vice versa.

Section 5.9. Emergency Work

In the event that the Selectmen determine that emergency conditions require that work otherwise requiring planning board approval must proceed before such approval can be obtained the Selectmen may authorize the work to proceed before planning board approval is obtained to the extent which the Selectmen deem necessary to protect public health and safety.

Section 6. Considerations

The planning board's decision on any application for proposed action involving the cutting or removal of trees or the tearing down or destruction of stone walls within the right-of-way of a scenic road shall be based on consideration of the following:

1. preservation of natural resources;
2. environmental values;
3. historical values;
4. scenic and aesthetic characteristics;

5. public safety;
6. compensatory actions proposed, such as replacement of trees or walls;
7. existence or absence of reasonable alternatives (including a no-build alternative);
8. consistency with articulated town policies; and
9. other sound planning considerations.

Section 7. General

The planning board may adopt more detailed regulations for carrying out provisions hereunder.

ARTICLE XVIII Wetlands Protection

Section 1. Purpose

The purpose of this bylaw is to maintain the quality of surface water, the quality and level of the ground water table and water recharge areas for existing or potential water supplies, to protect the public health and safety, to protect the community against the costs which may be incurred when development occurs in or adjacent to wetland resource areas; and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the Town of Lincoln.

Accordingly, this bylaw protects the wetlands, related water resources, the adjoining land areas, and important wildlife habitat areas in the Town of Lincoln by controlling activities deemed by the Conservation Commission likely to have a significant effect, immediate or cumulative, upon resource area values, including but not limited to the following: protection of public or private water supply, protection of groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, avoidance of water pollution, protection of fisheries, protection of wildlife habitat and habitat for rare species including rare plant species, agriculture, aquaculture, and recreation values deemed important to the community (collectively, the "resource area values protected by this bylaw").

This bylaw is intended to utilize the Home Rule authority of the Town of Lincoln to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the State Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and agricultural structures of all kinds under the laws of the Commonwealth.

Section 2. Jurisdiction; Presumption

Except as permitted by the Conservation Commission pursuant to this bylaw, or as otherwise allowed in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following wetland resource areas: any freshwater wetland; marsh; wet meadow; bog; swamp; vernal pool; bank; reservoir; lake, pond of any size; river; stream; creek; lands under any water body; land subject to flooding or inundation by groundwater or surface water; or the following upland buffer zone resource areas: lands within 200 feet of any river or perennial stream; and lands within 100 feet of any freshwater wetland, marsh, wet meadow, bog, swamp, vernal pool, bank, reservoir, lake, pond, intermittent stream, creek, lands under any water body, and land subject to flooding or inundation by groundwater or surface water (collectively

the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

Section 3. Exemptions and Exceptions

The application and permit required by this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement, provided that the Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency, and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The application and permit required by this bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural use as defined by the Massachusetts Wetlands Protection Act at 310 CMR 10.04.

Mosquito control work which is exempted from the State Wetlands Protection Act is subject to this bylaw, but all such mosquito control work proposed throughout the Town in any year may be presented in a single application, no filing fee will be charged, no notice to abutters will be required and all such work may be allowed by a single annual permit.

No permit shall be required under this bylaw for filling, dredging, building upon or other alteration of a resource area undertaken by the Town of Lincoln Water Board, acting within its lawful authority and in compliance with applicable State and Federal laws and regulations.

Other than as stated in this section, the exceptions provided in the State Wetlands Protection Act (G.L. Ch. 131 §40) and in the Wetlands Regulations (310 CMR 10.00) shall not apply to this bylaw, and a permit shall be required as set forth in this bylaw whether or not an Order of Conditions is also required under the State Wetlands Protection Act.

Section 4. Applications and Fees

A written application shall be filed with the Commission by any person who proposes to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe (a) the proposed activities and (b) their effects on the resource areas protected by this bylaw, and (c), where applicable, any practicable alternatives to such activities. No such activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the application and plans under this bylaw the notice of intent and plans filed under the State Wetlands Protection Act (M.G.L. Ch. 131 §40) and Regulations (310 CMR 10.00).

Any person desiring to know whether or not any proposed activity or any area is subject to this bylaw may file a written Request for Determination of Applicability (RFD) from the Commission. Such RFD shall contain data and plans sufficient to enable the Commission to identify and understand the proposed activity and its location or the location of the area to which the request relates.

At the time of an application or RFD the applicant shall pay a filing fee specified in Regulations of the Commission. This fee is in addition to that required by the State Wetlands Protection Act. This fee is not refundable. The fee for an application for modification of a permit will be the excess, if any, of (i) the amount calculated as provided above for the activities requested to be allowed by the modified permit, over (ii) the fee paid for the original permit, but the fee for an application for modification of a permit will in no event be less than \$25.

Upon receipt of an application, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the "consultant fee." The specific consultant services may include, but are not limited to, performing or verifying the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations pursuant to Section VII, hydrogeologic and drainage analysis; and researching environmental or land use law.

Pursuant to Massachusetts General Law, Chapter 44, Section 53G, consultant fees shall be deposited in a special account to be established by the town treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the Conservation Commission without further appropriation, provided, however, that such funds are to be expended by it only in connection with carrying out the Commission's responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The exercise of discretion by the Commission in making its determination to require the payment of a consultant fee shall be based upon its reasonable finding that additional information available only through outside consultants is necessary for the making of an objective decision.

Any applicant aggrieved by the imposition of, or size of, the consultant fee, or any act related thereto, may appeal according to the provisions of the Massachusetts General Laws. The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit or other application or Request for Determination of Applicability filed by a government agency.

The maximum consultant fee charged to reimburse the Commission for reasonable costs and expenses shall be according to the following schedule:

Project Cost (\$)	Maximum Fee (\$)
Up to 100,000	500
100,001 - 500,000	2,500
500,001 - 1,000,000	5,000
1,000,001 - 1,500,000	7,500
1,500,001 - 2,000,000	10,000

Each additional \$500,000 project cost increment (over \$2,000,000) may be charged not more than an additional \$2,500 maximum fee per increment.

The project cost means the estimated, entire cost of the project, including but not limited to, resource area delineation, building construction, site preparation, landscaping, and all site improvements. The consultant fee shall be paid pro rata for that portion of the project

cost applicable to those activities within resource areas protected by this bylaw. The project shall not be segmented to avoid the consultant fee. The applicant shall submit estimated project costs at the Commission's request, but the lack of such estimated project costs shall not impact payment of the consultant fee.

Section 5. Notice and Hearings

Any person filing an application for a permit or RFD with the Conservation Commission, shall, within seven (7) days after such person is informed of the date and time of the hearing thereon, give written notice thereof, by certified mail (return receipt requested) or hand delivery, to all abutters according to the most recent records of the assessors, including owners of land across a traveled way or body of water, to the owner of the land affected, if different from the applicant, and to abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. Such notice shall state the time and place of the hearing, shall identify the applicant, the property affected and the work proposed, and shall either (1) enclose a copy of the application or request, with plans, or (2) shall state where copies may be examined and duplicated. The applicant shall submit to the Commission, at or before the public hearing, receipts for such notices or other satisfactory evidence that such notices have been given, and failure to provide such evidence shall be grounds for rescheduling of the hearing, or if intentional or repeated, denial of the requested permit.

The Commission shall conduct a public hearing on any application, Abbreviated Notice of Resource Area Delineation (ANORAD), or RFD, with notice given at the expense of the applicant at least five business days prior to the hearing, in a newspaper of general circulation in the Town of Lincoln.

The Commission shall commence the public hearing within 21 days from receipt of a completed application, ANORAD, or RFD unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit, other order or Determination of Applicability in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission shall, whenever appropriate, combine its hearing under this bylaw with the hearing conducted under the State Wetlands Protection Act (M.G.L. Ch.131 §40) and Regulations (310 CMR 10.00).

The Commission shall have authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant which are deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in Section 6. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

Section 6. Coordination With Other Boards

Any person filing a permit application, ANORAD, or RFD with the Conservation Commission, or any amendment thereof, shall provide a copy thereof, together with any accompanying plans, within seven (7) days after filing with the Commission, by certified mail (return receipt requested) or hand delivery, to the Planning Board, Board of Health, and Building Inspector, or to such other Town boards and officials as the Commission or its Administrator may request. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application, ANORAD, or RFD pertains to property within 300 feet of that municipality. The applicant shall submit receipts for such copies to the Commission at or before the public hearing. Town boards

and officials shall be entitled to file written comments and recommendations with the Commission at or before the public hearing. The Commission shall take any such comments and recommendations into account but shall not be bound by them. The applicant shall have the right to receive copies of any such comments and recommendations at or before the public hearing.

Section 7. Permits, Determinations, Conditions and Appeals

If the Conservation Commission after a public hearing determines that the activities which are the subject of the permit application, or the land and water uses which will result there from, are likely to have an effect, immediate or cumulative, upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

It shall be presumed that significant adverse effect on the resource area values protected by this bylaw will result from any filling, dredging, building upon or other alteration within a wetland resource area or within 50 feet of the edge of any freshwater wetland, marsh, wet meadow, bog, swamp or vernal pool, within 50 feet of the top of the bank of any lake, pond or intermittent stream, or within 100 feet of the top of the bank of any river or perennial stream, unless the applicant demonstrates by convincing evidence that such significant adverse effect will not occur.

Lands within 200 feet of rivers or perennial streams and lands within 100 feet of other wetland resource areas are presumed important to the protection of these resources because activities undertaken in these upland buffer zone resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction or clearing, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction, clearing and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, excess nitrogen and phosphorus loading, and loss of wildlife habitat. The Commission may therefore establish performance standards for protection of such lands including, without limitation, strips of continuous, undisturbed vegetative cover within the upland buffer zone resource area, or other form of work limit or setback to buildings, roads, landscaping and other features, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw. The specific size and type of protected area may be established by regulations of the Commission.

Where the Commission determines that the proposed activity would have adverse effects on the wetland values protected by this bylaw the applicant shall prove by a preponderance of the credible evidence that there is no practicable alternative to the proposed activity which would have materially less adverse effect on the wetland values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial purpose), logistics, existing technology, costs of the alternatives, and overall project costs.

When making its decision the Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

To prevent wetlands loss, the Commission shall require applicants to avoid wetland resource area alteration wherever feasible. Where alteration is unavoidable, it shall be minimized, and shall require full mitigation. The Commission may authorize or require replication of wetland resource areas as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication to restore the wetlands values of the original resource area.

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife corridors in the area, or possible presence of rare species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the State Wetlands Protection Act Regulations (310 CMR 10.60).

The Commission shall presume that all areas meeting the definition of "vernal pools" under **Section 9** of this bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential vernal pool habitat functions. Any formal evaluation shall be performed by an individual meeting the qualifications under the wildlife habitat section of the State Wetlands Protection Act Regulations.

The Commission is empowered to deny or revoke a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; or if the project as proposed might cause significant adverse effects, immediate or cumulative, upon the resource area values protected by this bylaw; or where no conditions are adequate to protect those values.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Permits issued under this bylaw may be extended for one or more periods of up to three years each, if requested in writing at least thirty days before the expiration of the permit, provided that the Commission finds that (1) good cause has been shown for such extension and (2) such extension will not have significant adverse effects, immediate or cumulative, upon any of the resource area values protected by this bylaw. The Commission may grant such an extension at any public meeting, but if it determines that the public interest so requires the Commission may defer action on a request for an extension until after notice is given and a public hearing is conducted, all as provided above with respect to the original application. If such an extension is not obtained and a permit expires before all activities authorized by such permit have been completed then all such activities shall cease until a new permit has been issued pursuant to the procedures set forth in this bylaw.

Notwithstanding the above, a permit may identify conditions or requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke or modify a permit, other order, determination or other decision issued under this bylaw after public notice and public

hearing, and notice to the holder of the permit. Amendments to permits or determinations shall be handled in the manner set out in the regulations and policies hereunder.

The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions, Order of Resource Area Delineation, Determination of Applicability or Certificate of Compliance issued under the State Wetlands Protection Act and Regulations. In the event that conditions are imposed under this bylaw which are not imposed under the State Wetlands Protection Act such conditions shall be imposed by a separate written permit.

No activity subject to any such permit shall commence until the permit issued by the Commission with respect to such work has been recorded with the applicable Registry of Deeds and the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform, the Commission may record the documents itself at the applicant's expense. The Commission may also, at its discretion, require the recording of an Order of Resource Area Delineation at the applicant's expense.

The Commission shall, after receiving a written request for a Certificate of Compliance, inspect the resource area where any activity governed by a permit issued under this bylaw was carried out and, if such activity has been completed in accordance with said permit, the Commission shall, within twenty-one (21) days after such request, issue a Certificate of Compliance evidencing such determination, which may in an appropriate case be combined with a Certificate of Compliance issued under the State Wetlands Protection Act. A Certificate of Compliance may specify conditions in the permit which will continue to apply.

Section 8. Regulations

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. At a minimum these regulations shall define key terms in this bylaw not inconsistent with the bylaw, and procedures governing the amount and filing of fees.

Section 9. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within or actually affecting any resource area protected by this bylaw:

- A. Removal, excavation, or dredging of soil, sand, gravel, organic matter or aggregate materials of any kind;
- B. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;
- C. Drainage, or other disturbance of water level or water table;
- D. Dumping, discharging, or filling with any material which may degrade water quality;
- E. Placing of fill, or removal of material, which would alter elevation;

F. Driving of piles, erection, expansion or repair of buildings, or structures of any kind, except (i) work wholly inside a building and (ii) exterior repair of existing buildings or structures which presents no risk of alteration of land, waters or vegetation;

G. Placing of obstructions or objects in water;

H. Destruction of plant life including cutting or trimming of trees and shrubs;

I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of water;

J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater, including, without limitation, any activity which may cause surface water runoff contaminated with sediments, chemicals or animal wastes;

K. Activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

The term "bank" shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

The term "Commission" shall mean the Conservation Commission of the Town of Lincoln.

The term "important wildlife corridor" shall include any land, the topography, soil structure, plant community composition and structure, proximity to water bodies and waterways, and hydrologic regime of which provides food, shelter, migratory, breeding or overwintering areas for birds, mammals, reptiles or amphibians.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust or estate, any regional, county or municipal governmental body, administrative agency or public or quasi-public corporation or body, including the Town of Lincoln, and any other legal entity, its legal representatives, agents, or assigns.

The term "pond" shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term "rare species" shall include, without limitation, all vertebrate and invertebrate animal and all plant and fungus species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

The term "vernal pool" shall include, in addition to scientific definitions found in the regulations under the State Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife, and regardless of whether the site is contained within another resource area. The adjacent upland buffer zone resource area for vernal pools shall extend 100 feet outward from the mean annual high-water line defining the depression.

Except as otherwise provided in this bylaw or in regulations of the Conservation Commission, the definitions of terms and procedures in this bylaw shall be as set forth in the State Wetlands Protection Act (M.G.L. Ch. 131 Section 40) and Regulations (310 CMR 10.00).

The Commission shall have copies of the State Wetlands Protection Act and the Wetlands Regulations available for inspection and, at the expense of the person requesting a copy, duplication.

Section 10. Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.

B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

Section 11. Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Commission, its agents, officers, and employees shall have authority to enter upon public or private land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary, subject to the limitations imposed by applicable Federal or State law.

The Commission and the Board of Selectmen shall have authority to enforce this bylaw, its regulations, and permits issued hereunder by violation notices, administrative orders and civil and criminal court actions.

Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.

Town boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates provisions of this bylaw, or regulations, permits, or administrative orders issued hereunder, shall be served with a Notice of Violation and may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Violations shall be punishable by a fine of \$300 per offense. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in

place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits or administrative orders violated shall constitute a separate offense.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the bylaw or in violation of any permit issued pursuant to this bylaw shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless commenced within three years following the date of acquisition of the real estate by such person.

Section 12. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have adverse effects, immediate or cumulative, upon the resource area values protected by this bylaw. The applicant has the additional burden to overcome the presumption set forth in **Section 7** above when activities will be located within a wetland resource area or within 50/100 feet of the edge of an area listed in that Section. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or to impose conditions sufficient to prevent any adverse effects on the resource area values protected by this bylaw.

Section 13. Appeals

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with M.G.L. Chapter 249, Section 4.

Section 14. Severability

The invalidity of any section or provision or phrase of this bylaw, or disapproval of any section or provision or phrase of this bylaw by the Attorney General, shall not invalidate any other section or provision or phrase thereof, nor shall it invalidate any permit, Determination of Applicability, or other order or decision which previously has been issued.

ARTICLE XIX Underground Storage Tanks

Section 1. Authority and Purpose

a. This By-law is adopted by the Town of Lincoln under its Home Rule powers, its police powers to protect the public health and welfare, its authorization under Massachusetts General Law, Chapter 40, Section 21 and Chapter 148, Section 9, and other provisions of law.

b. The purpose of this By-law is to control the use and maintenance of underground tanks for the storage of hazardous substances that are generally exempt from State and Federal regulation, to protect groundwater and surface water from contamination because of leakage, and to prevent damage to persons or property because of fire. The purpose of the By-law is also to protect the owners of these tanks and the Town of Lincoln from the potentially devastating financial and environmental consequences of contamination of wells or groundwater due to leakage arising from tank corrosion, improper installation or other causes.

Section 2. Definitions

a. Code means the Board of Fire Prevention Regulations Governing Tanks and Containers as set forth at 527 CMR 9.00 and following.

b. Fire Chief means the Fire Chief of the Town of Lincoln.

c. Hazardous substance means any liquid hydrocarbon product, including but not limited to gasoline, heating oil and diesel oil, and any other substance controlled as being toxic or hazardous under M.G.L. Chapter 21E.

d. Owner with respect to a tank means the owner of the land on which an underground tank is located.

e. Underground tank means any containment system (including associated piping) used to contain a hazardous substance 10 percent or more of the volume of which is beneath the surface of the ground, but excluding:

(i) a tank of over 1,100 gallons capacity for storing motor fuel;

(ii) a tank for storing motor fuel for commercial purposes;

(iii) a tank for storing heating oil other than for consumptive use on the premises where stored;

(iv) a septic tank used to contain sewage;

(v) a pipeline facility regulated under State or Federal law;

(vi) a tank situated upon or above the surface of the floor in an underground area, such as the basement of a home.

Section 3. Registration of Existing Tanks

a. On or before October 1, 1991, the owner of each underground tank shall file with the Fire Chief a form setting forth the size, type, age (with proof of age), contents and location of the underground tank. This form shall be made available to the public by the Fire Chief. The age of a tank is to be determined from the date when it was first installed. If the owner cannot document the age of a tank to the satisfaction of the Fire Chief, the installation date will be presumed to be 1974. The registration tag issued by the Fire Chief shall be visibly affixed to the fill pipe by the owner on or before October 1, 1991.

b. On or after October 2, 1991, each distributor of heating oil or other hazardous substance that is requested to fill an underground tank without a registration tag shall notify the Fire Chief within 48 hours of such request of the existence and location of the tank. It shall not be considered a violation of any provision of this By-law for a fuel oil distributor to fill an underground tank without a registration tag provided that the distributor duly notifies the Fire Chief in accordance with the provisions of the previous sentence.

Section 4. New Tanks

a. No underground tank shall be installed or put in service after the effective date of this By-law. A new above ground tank for containing a hazardous substance must be constructed and installed in accordance with the Code.

b. A tank may be installed below grade provided that it is placed within a concrete vault having sufficient capacity to contain not less than 150% of the capacity of the tank and provided that the interior surface of the vault is finished with an epoxy sealant, or comparable material, capable of rendering the vault impervious. The vault shall have a weatherproof cover and the tank or tanks located within the vault shall be readily accessible for inspection by the owner or the Fire Chief. The vault shall be

inspected and approved by the Fire Chief prior to the issuance of a license pursuant to M.G.L. Chapter 148, Section 13.

c. A tank used to contain motor fuel with a capacity of 1,100 gallons or less may be installed underground in compliance with the Code.

Section 5. Removal of Underground Tanks

a. On or before December 31, 1994, the owner shall empty and remove any underground tank that was installed before January 1, 1975.

b. Any tank which is not required to be removed under paragraph (a) of this section shall be emptied and removed in accordance with the schedule set forth in Appendix 1 to this By-law.

c. As required by the provisions of the Code, the owner must empty and remove any underground tank that is either out-of service for a period of six months or abandoned.

d. Removal of an underground tank shall be performed under the supervision of the Fire Chief in compliance with the removal provisions of the Code. The Fire Chief may approve decommissioning of a tank instead of removal where permitted by the Code, provided that, immediately prior to decommissioning, the tank shall be tested for leakage of a hazardous substance using a method acceptable to the Fire Chief.

e. Notwithstanding Section 5(a) & (b), any underground tank that meets the requirements of 527 CMR 9.08(3)(a) shall be emptied and removed no later than 30 years following the date of installation.

Section 6. Procedure in Case of Spill or Leak

a. Any person who (i) is aware of a spill or an unaccounted for increase in consumption of a hazardous substance in connection with an underground tank, or (ii) detects the vapors of a hazardous substance in a neighboring structure, sewer, well or area, shall report the same immediately to the Fire Chief. The Fire Chief shall investigate the report and may inspect the premises, order testing, review records and require containment or cleanup. The Fire Chief shall also notify the Bureau of Waste Site Cleanup at the Department of Environmental Protection, when required by law, and take reasonable steps to notify absentee owners.

b. If a leak from an underground tank is confirmed, the owner must empty and remove or decommission the tank in accordance with the Code.

Section 7. Variances

a. The Board of Selectmen may, after receiving comment from the Fire Chief and after a public hearing, vary the application of this By-law in accordance with the provisions of this section, when the applicant has demonstrated financial hardship. Notice of the hearing shall be given by the Selectmen, at the applicant's expense, at least ten days prior thereto, by certified mail to all abutters to the property on which the tank is located. The notice shall include a statement of the variance sought and the reasons therefor. Any grant or denial of a variance shall be in writing and shall contain a brief statement of the reasons for the grant or denial.

b. In considering the variance request, the Board of Selectmen shall take into consideration factors such as the direction of the groundwater flow, soil conditions, depth to groundwater, size, shape and slope of the lot, and proximity of existing and potential water supplies. No variance shall be granted unless the Board of Selectmen

finds that the variance, as granted, would result in the same degree of environmental protection as required by the By-law.

c. Any variance granted under this section shall be limited in effect to extending the period of compliance with the removal provisions of this By-law, as set forth in **Section 5**. In no event shall any variance extend to the period of compliance 36 months or more beyond the time otherwise required by the By-law.

Section 8. Administration and Enforcement

a. This By-law shall be administered by the Fire Chief.

b. Any owner or fuel oil distributor who violates any provision of this By-law shall be subject to a fine of one hundred dollars for each offense. Each day during which such violation continues shall constitute a separate offense.

Section 9. Costs

All costs incurred in complying with the provisions of this By-law and in obtaining compliance shall be paid by the owner and operator of the affected underground tank.

Section 10. Town of Lincoln Underground Tanks

Underground tanks owned by the Town of Lincoln must be removed by December 31, 1997. If such tanks are not removed by December 31, 1994, they shall be tested for leakage annually. **Section 7** shall not apply to underground tanks owned by the Town of Lincoln.

Section 11. Severability

Each part of this By-law shall be construed as separate to the end that if any part or sentence, clause or phrase thereof shall be held invalid for any reason, the remainder of that part and all other parts of the By-law shall continue in full force.

ARTICLE XX Flint's Pond Water Supply Protection Bylaw

Section 1. Purpose

The purpose of this bylaw is to protect the Flint's Pond drinking water supply in the Town of Lincoln by restricting and controlling activities which are likely to have a significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond.

Section 2. Jurisdiction; Presumption

a. Except as permitted by the Commission pursuant to this bylaw, or as otherwise allowed in this bylaw, no person shall undertake any activity within the Flint's Pond Watershed that causes a significant adverse impact, as defined in **Section 8**, on the water quality of Flint's Pond.

b. The following activities are hereby found to have a significant adverse impact on the water quality of Flint's Pond and are accordingly prohibited:

1. Fishing, swimming, boating (except as authorized by the Water Department for official business) or bathing in Flint's Pond or otherwise being on or within the waters of Flint's Pond;
2. Allowing any domestic animal to swim or enter the waters of Flint's Pond;
3. Throwing any dirt, rubbish or foreign materials into the waters of Flint's Pond;
4. Active or passive recreational activities on public lands within 200 feet of Flint's Pond unless allowed by a Recreational Management Plan adopted by

the Conservation Commission for public lands within the vicinity of Flint's Pond. The Plan may allow recreational activities which are deemed not to adversely impact water quality; and

5. Any activity inconsistent with the Massachusetts Department of Environmental Protection Title V requirements regulating construction of new subsurface sewage disposal systems within 400 feet of the shoreline of Flint's Pond. This shall not apply to repairs or replacement of existing systems as long as all relevant Board of Health and Title V requirements are satisfied.

c. It shall be presumed that the following activities will have a significant adverse impact on the water quality of Flint's Pond as protected under this Bylaw and shall accordingly be subject to the permitting requirements set forth herein:

1. Pasturing of domestic grazing animals within 400 feet of Flint's Pond or any tributary thereto;
2. Storage of animal manure within 400 feet of Flint's Pond or any tributary thereto;
3. The use of any fill material within 400 feet of Flint's Pond or any tributary thereto unless the fill has been designated as "clean fill";
4. Any surface or subsurface discharge, including but not limited to stormwater and hazardous materials, within 400 feet of Flint's Pond or any tributary thereto (but excluding normal downgradient rain or storm-related surface runoff from residential properties and public roadway discharges which utilize best management practices (BMPs));
5. The application of outdoor pesticides, including herbicides, insecticides, fungicides and rodenticides within 400 feet of Flint's Pond or any tributary thereto;
6. The application of outdoor fertilizers within 400 feet of Flint's Pond or any tributary thereto;
7. Earth moving/clearing activities which cause a single disturbance or cumulative disturbance over 3 years of more than 5000 square feet within 400 feet of Flint's Pond or any tributary thereto;
8. The removal of earth within the Flint's Pond watershed or within 400 feet of Flint's Pond, including soil, loam, sand, gravel, clay, quarried rock or any other earth products except where such removal is entirely incidental to or in connection with the construction at the site or removal of an approved structure or street; and
9. Those activities within the Flint's Pond Watershed or within 400 feet of Flint's Pond that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use.

Section 3. Exceptions

The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of public health or safety; provided the activity is to be performed by or has been ordered performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to the commencement of the activity or within 24 hours after commencement, provided that the Commission or its agent certifies that the activity is an emergency and provided that within 21 days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission, after notice and a public meeting, revoke or modify an emergency project approval and order immediate restoration and mitigation measures to protect the water quality of Flint's Pond.

No permit shall be required under this bylaw for any activity other than those listed in **Section 2c** above.

No permit shall be required for any activity undertaken by the Lincoln Water Commission, acting within its lawful authority to protect the water supply of Flint's Pond.

Section 4. Application for Permit

A written application shall be filed by any person who proposes to conduct activities (as defined in **Section 2**) that are presumed to cause a significant adverse impact on the water quality of Flint's Pond. The application shall include such information and plans as are deemed necessary by the Conservation Commission to describe (a) the proposed activities, (b) their potential effects on the water quality of Flint's Pond as protected under this bylaw, and any feasible alternatives to such activities. No such activities shall commence without receiving and complying with a written permit issued by the Conservation Commission.

Section 5. Notice and Meetings

The Conservation Commission shall conduct a public meeting within 21 days from receipt of an application to conduct any activity (as defined in **Section 2c**) which is presumed to cause a significant adverse impact on the water quality of Flint's Pond. The Commission shall give to each applicant at least seven (7) days prior written notice, by certified mail or hand delivery, of the meeting date at which such application will be considered. In addition, the notice posted by the Commission pursuant to the requirements of the Open Meeting Law (M.G.L. Chapter 39, Section 23A-C) shall include a reference to such application as an agenda item for such meeting.

The Commission shall have authority to continue its consideration of the application to the date of a subsequent public meeting, for reasons stated at the meeting, which may include receipt of additional information offered of the applicant or others, information and plans required of the applicant which are deemed necessary by the Commission in its discretion, or comments and recommendations of boards or officials listed in **Section 6**. In the event the applicant objects to a continuance or postponement of consideration of its application, the Commission shall take action on such information as is available.

Section 6. Coordination With Other Boards

Any person filing a permit application with the Conservation Commission shall provide a copy thereof, together with any accompanying plans, within (5) days after filing with the Conservation Commission, to the Water Commission, Board of Health, and to such other boards and officials as the Commission may request. Town boards and officials shall be entitled to file written comments and recommendations with the Conservation Commission at or before the public meeting. The Commission shall consider any such comments in their final decision. The applicant shall have the right to receive copies of any such comments and recommendations at or before the public meeting.

Section 7. Permits, Conditions and Appeals

The Commission, within twenty-one (21) days of the last meeting at which the application is considered, shall issue or deny a permit for the activities requested. If the Commission determines that the activities which are the subject of the application are likely to have a significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond then the Commission shall deny a permit for the activities requested. If the Commission issues a permit, it shall impose conditions which the Commission deems necessary to protect the water quality of Flint's Pond.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; if the activity as proposed is likely to have significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond; or where no permit conditions are adequate to protect the water quality. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public meeting.

A permit shall expire three years from the date of issuance. Permits issued under this bylaw may be extended for one or more periods of up to three years each, if requested in writing at least 30 days before the expiration of the permit, provided that the Commission finds that (1) good cause has been shown for such extension and (2) such extension will not have a significant adverse impact, immediate or cumulative, upon the water quality of Flint's Pond. The Commission shall grant such extension at a public meeting for which the applicant for an extension and the general public have received the same prior notice as is required in **Section 5** hereof. If such an extension is not obtained and a permit expires before all activities authorized by such permit have been completed, then all such activities shall cease until a new permit has been issued pursuant to the procedures set forth in this Bylaw.

For good cause the Commission may revoke or modify a permit issued under this bylaw upon notice to the holder of the permit and public notice and public meeting, all in the same manner as required in **Section 5** hereof.

If the Commission has failed to hold a meeting within the 21 day period provided in this bylaw, or if the Commission, after completing such a meeting has failed to issue a permit within 21 days of the close of the public meeting, or where the Commission has issued or denied a permit, the applicant or any other person authorized by law may seek judicial relief as provided by law.

Section 8. Definitions

Significant

Adverse Impact: That which causes or potentially causes a deterioration in the quality of the drinking water supply for Flint's Pond.

Clean Fill: Inert fill that is non-polluting such as soil containing no pesticides or fertilizers, brick, cured concrete, stone, tree or stumps, wood chips or yard waste.

Commission: The Conservation Commission of the Town of Lincoln.

Flint's Pond: The area containing the surface water drinking water supply for the Town of Lincoln (the boundaries of which are shown on Assessor's Map/Parcel 27-8).

Toxic or Hazardous

Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Lincoln. Toxic or hazardous materials include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (MGL) Chapter 21C and 21E and 310 CMR 30.00 and also include such products as solvents and thinners in quantities greater than normal household use.

- Person:** Any individual, group of individuals, association, partnership, corporation, company, business organization, trust or estate, any federal, state, regional, county or municipal governmental body, administrative agency or public or quasi-public corporation or body, including the Town of Lincoln, and any other legal entity.
- Tributary:** Any stream or other water body which flows into Flint's Pond.
- Watershed:** The area of land that creates the catchment or drainage area of the surface water supply.

Section 9. Enforcement

The Commission, its agents, officers, and employees shall have authority to enter upon public or private land for the purpose of performing their duties under this bylaw and may make or cause to be made examinations, surveys or sampling as necessary, subject to the limitations imposed by the applicable federal or state law.

The Commission and the Board of Selectmen shall have authority to enforce this bylaw and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.

Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.

Any person who violates any provision of this bylaw or any permit issued thereunder, shall be punished by a fine of up to \$100.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw or permit violated shall constitute a separate offense.

Section 10. Burden of Proof

The applicant for a permit shall have the burden of providing credible evidence that the activity (as specified in **Section 2**) proposed in the application will not have significant adverse impacts on the water quality of Flint's Pond. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit, or to impose conditions sufficient to prevent any adverse impact on the water quality of Flint's Pond.

Section 11. Severability

The invalidity of any section or provision or phrase of this bylaw, or disapproval of any section or provision or phrase of this bylaw by the Attorney General, shall not invalidate any other section or provision or phrase thereof, nor shall it invalidate any permit or decision which previously had been issued.

ARTICLE XXI Demolition of Significant Buildings or Structures

Section 1. Intent and Purpose

This By-law is adopted for the purpose of protecting the historic and aesthetic qualities of the Town by preserving, rehabilitating or restoring, whenever possible, buildings or structures which constitute or reflect distinctive features of the architectural or historic resources of the Town, thereby promoting the public welfare and preserving the cultural heritage of the Town. This By-law applies only to the exteriors of buildings and structures.

Section 2. Definitions

For the purposes of this By-law, the following words and phrases have the following meanings:

- 2.1 Building: any combination of materials forming a shelter for persons, animals or property.
- 2.2 Day: calendar day.
- 2.3 Demolition: any act of pulling down, destroying, removing, burning by arson, dismantling, or razing a building or structure, or any substantial portion thereof, or commencing the work of total or substantial destruction with the intent of completion of the same. Substantial portion is defined as twenty-five percent (25%) of the volume of the building or structure, or twenty-five percent (25%) of the roof structure.
- 2.4 Demolition Permit: a written approval for demolition of a building or structure, issued by the LBI in response to an application for such a permit.
- 2.5 Historic District: an historic district established by the Town pursuant to Chapter 40C of the Massachusetts General Laws or special law.
- 2.6 LBI: the Lincoln Building Inspector, or other person authorized by state law or local By-law to issue demolition permits in the Town.
- 2.7 LHC: the Lincoln Historical Commission.
- 2.8 Preferably Preserved Significant Building or Structure: any historically significant building or structure which is established after a public hearing by the LHC to be worthy of preservation in whole or in part.
- 2.9 Premises: the entire parcel of land upon which the significant building or structure is or was located.
- 2.10 Significant Building or Structure: any building and/or structure, or portion thereof, not within an historic district, but which meets one or more of the following criteria:
 - A. It is listed on, or is within an area listed on, the National or State Register of Historic Places, or is the subject of a pending application for listing on said National or State Register;
 - B. It is:
 - (1) determined by majority vote of the LHC to be importantly associated with one or more historic persons or events, or with the architectural, cultural, political, economic or social history of the Town of Lincoln, The Commonwealth of Massachusetts, or the United States of America; or
 - (2) determined by majority vote of the LHC to be historically or architecturally important by reason of period, style, method of construction, or association with a particular architect or builder, either by itself or in the context of a group of buildings or structures.

2.11 Structure: the combination of materials or part thereof other than a building, including but not limited to a bridge, dam, tower, silo, monument, stone wall, fence, path or road.

2.12 Six-Month Delay: the six-month period, dated from the submission of the LHC report.

Section 3. Procedure

3.1 No owner, tenant or occupant of any premises shall undertake any demolition of a building or structure on such premises without first submitting an application for a demolition permit in accordance with this By-law. A permit for the demolition of a building or structure shall be issued only upon compliance with the provisions of this By-law.

3.2 The LBI shall forward a copy of each demolition permit application for a building or structure identified in **Section 2** of this By-law to the LHC and shall give public notice at the expense of the applicant in the local newspaper within seven (7) days after the filing of such application. Every application for a demolition permit for a building and/or structure subject to the provisions of this By-law, as provided in **Section 2** of this By-law, shall be filed with the LBI and shall contain the following information:

- A. the address of the building and/or structure to be demolished;
- B. the owner's name, current address and telephone number;
- C. a brief description of the type of building and/or structure and of the proposed demolition; and
- D. the date of construction of the building and/or structure as established by the Board of Assessors, deed, or other documentation.

3.3 Within thirty (30) days after its receipt of such application, the LHC shall determine whether or not it is a significant building or structure. The applicant for the permit shall be entitled to make a presentation to the LHC if he or she makes a timely request in writing to the LHC.

3.4 If the LHC determines that the building or structure is not significant, it shall so notify the LBI and the applicant in writing and the LBI may issue a demolition permit. If the LHC determines that the building or structure is significant, it shall notify the LBI and the applicant in writing that a demolition plan review must be made prior to the issuance of a demolition permit. If the LHC fails to notify the LBI and the applicant of its determination within thirty (30) days after its receipt of the application, then the building or structure shall be deemed not significant and the LBI may issue a demolition permit.

3.5 If the applicant decides to proceed, then within sixty (60) days after the applicant is notified that the LHC has determined that a building or structure is significant, the applicant for the permit shall submit to the LHC five (5) copies of a demolition plan, which shall include the following information:

- A. a map showing the location of the building or structure to be demolished with reference to lot lines and to neighboring buildings and structures;

- B. photographs of all elevations;
- C. a description of the building or structure, or part thereof, to be demolished;
- D. the reason for the proposed demolition and data supporting said reason; and
- E. plans for proposed restoration or building.

3.6 Within thirty (30) days of receipt of the materials required under **Section 3.5** the LHC shall hold a public hearing with respect to the application for a demolition permit, and shall give public notice at the expense of the applicant in a local newspaper of the time, place and purposes thereof at least fourteen (14) days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the LHC to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors, or the planning board, or any person filing written request for notice of hearings, and to such other persons as the LHC shall deem appropriate to receive notice. Within thirty (30) days after the closing of the public hearing, the LHC shall file a written report with the LBI on the demolition plan which shall include the following:

- A. a description of the age, architectural style, historical association and importance of the building or structure to be demolished; and
- B. a determination as to whether or not the building or structure should be preferably preserved and the reasons therefor.

3.7 If, following the demolition plan review, the LHC does not determine that the building or structure should be preferably preserved, or if the LHC fails to file a report with the LBI within the time limit set out in **Section 3.6**, then the LBI may issue a demolition permit.

3.8 If, following the demolition plan review, the LHC determines that the building or structure should be preferably preserved, then the LBI shall not issue a demolition permit for a period of six (6) months from the date of the filing of the LHC's report unless the LHC informs the LBI prior to the expiration of such six (6) month period that it is satisfied that the applicant for the demolition permit has made a bona fide, reasonable and unsuccessful effort to find a way to preserve, rehabilitate or restore the building or structure, or has agreed to accept a demolition permit on specified conditions approved by the LHC.

Section 4. Emergency Demolition

If the condition of a building or structure poses a serious and imminent threat to public health or safety due to its deteriorated condition, the owner of such building or structure may request the issuance of an emergency demolition permit from the LBI. As soon as practicable after the receipt of such a request, the LBI shall arrange to have the property inspected by a board consisting of the LBI, the Chairs of the LHC and the Board of Health, and the Chief of the Fire Department, or their respective designees. After the inspection of the building or structure and consultation of this board, the LBI shall determine whether the condition of the building or structure represents a serious and imminent threat to public health or safety and whether there is any reasonable alternative to the immediate demolition of the building or structure which would protect the public health and safety. If the LBI finds that the condition of the building or structure poses a

serious and imminent threat to public health or safety, and that there is no reasonable alternative to the immediate demolition thereof, he or she may issue an emergency demolition permit to the owner of the building or structure. Whenever the LBI issues an emergency demolition permit under the provisions of this **Section 4**, he or she shall prepare a written report describing the condition of the building or structure and the basis of the decision to issue an emergency demolition permit with the LHC. Nothing in this **Section 4** shall be inconsistent with the procedures for the demolition and/or securing of buildings and structures established by Chapter 143, Sections 6-10, of the Massachusetts General Laws. In the event that a Board of Survey is convened under the provisions of Section 8 of said Chapter 143 with regard to any building or structure identified in **Section 2** of this By-law, the LBI shall request the Chair of the LHC or his or her designee to accompany that Board of Survey during its inspection. A copy of the written report prepared as a result of such inspection shall be filed with the LHC.

Section 5. Non-compliance

Anyone who demolishes a building or structure identified in **Section 2** of this By-law without first obtaining, and complying fully with the provisions of, a demolition permit, shall be subject to a fine of three hundred dollars (\$300) for each day, not to exceed sixty (60) days, in which such person was not in compliance with the provisions of a demolition permit. Upon a determination by the LHC that a building or structure is a preferably preserved significant building or structure, the owner shall be responsible for properly securing the building or structure, if vacant, to the satisfaction of the LBI. Should the owner fail to secure the building or structure, the loss of such building or structure through fire or other cause shall be considered demolition. In addition, unless a demolition permit was obtained for such demolition, and unless such permit was fully complied with, the LBI shall not for a period of three (3) years after the date of demolition issue a building permit for erection of a building and/or structure, paving of driveways or for parking pertaining to any premises on which a building or structure identified in **Section 2** of this By-law has been demolished.

Section 6. Building Permits

No permit for the erection of a new structure on the site of an existing significant building or structure may be issued prior to the issuance of a demolition permit for such existing building or structure.

No building permit shall be issued unless and until the applicant has satisfied all obligations for approvals under the Lincoln Zoning By-law, Lincoln Wetlands Protection By-law, Wetlands Protection Act, sanitary codes, and other pertinent federal, state and local laws.

Section 7. Intersection with Zoning By-law

The grant of a demolition permit by the LHC under this By-law shall not be construed as approval by the Town of Lincoln for the construction or reconstruction of any building or structure on the property. Once a demolition permit has been granted by the LHC under this By-law, unless the LBI has determined that the proposed construction may proceed as of right, the recipient of that demolition permit must obtain all approvals required under the Lincoln Zoning By-law from the Zoning Board of Appeals in the form of a special permit or variance for any such construction or reconstruction before a building permit shall issue.

Section 8. Appeals to Superior Court

Any person aggrieved by a determination of the LHC may, within twenty (20) days after the filing of the notice of such determination with the LBI, appeal to the superior court for Middlesex County. The court shall hear all pertinent evidence and shall annul the determination of the LHC if it finds the decision of the LHC to be unsupported

by the evidence or to exceed the authority of the LHC or may remand the case for further action by the LHC or make such other decree as justice and equity shall require.

Section 9. Severability

In case any section, paragraph or part of this By-law is declared invalid or unconstitutional by any court of competent jurisdiction, every other section, paragraph and part of this By-law shall continue in full force and effect.

ARTICLE XXII Community Preservation Committee

Section 1. Establishment

There is hereby established a Community Preservation Committee, consisting of nine (9) voting members pursuant to MGL Chapter 44B (the "Community Preservation Act"). The composition of the Committee, the appointment authority and the term of office for the Committee members shall be as follows:

One member of the Conservation Commission as designated by the Commission for a term of three years.

One member of the Historical Commission as designated by the Commission for a term of three years.

One member of the Planning Board as designated by the Board for a term of three years.

One member of the Recreation Committee as designated by the Committee for an initial term of one year and thereafter for a term of three years.

One member of the Housing Commission as designated by the Commission for an initial term of two years and thereafter for a term of three years.

Four members to be appointed by the Board of Selectmen, two members to be appointed for a term of one year and thereafter for a term of three years and two members to be appointed for a term of two years and thereafter for a term of three years.

Each member of the Committee shall serve for the term as set forth above to which such member is appointed, or until the person no longer serves as a member due to resignation or removal, or by virtue of no longer serving on the appointing commission, board or committee as set forth above, whichever is earlier. Any resulting vacancy in the Committee's membership shall be filled by the same commission, board or committee which originally appointed the vacating member, for the unexpired portion of such vacating member's appointed term.

Should any of the Commissions, Boards, or Committees who have appointment authority under this by-law be no longer in existence for whatever reason, the appointment authority for that Commission, Board or Committee shall become the responsibility of the Board of Selectmen.

Any member of the Committee may be removed for cause by his or her respective appointing authority after a hearing conducted by such appointing authority.

Section 2. Duties

The Community Preservation Committee shall study the needs, possibilities, and resources of the town regarding community preservation. The Committee shall consult with existing municipal boards, including the Conservation Commission, the Historical Commission, the Planning Board, the Recreation Committee, and the Housing

Commission, in conducting such studies. As part of its study, the Committee shall hold one or more public informational hearings on the needs, possibilities, and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.

The Community Preservation Committee shall make recommendations to the Town Meeting for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation, and preservation of land for recreational use, for the creation, preservation, and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in this section. With respect to community housing, the Community Preservation Committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

The Community Preservation Committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund, established pursuant to the Community Preservation Act, to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

In every fiscal year, the Community Preservation Committee shall recommend either that the legislative body spend, or set aside for later spending, not less than 10% of the annual revenues in the Community Preservation Fund for each of the following: (a) open space (not including land for recreational use), (b) historic resources; and (c) community housing.

Section 3. Requirement for a Quorum and Cost Estimates

The Community Preservation Committee shall comply with the provisions of the Open Meeting Law, M.G.L. Chapter 39, Sections 23A-C. The Committee shall not meet or conduct business without the presence of a majority of its members. The Committee shall approve its actions by majority vote. Recommendations by the Committee to the Town Meeting shall include the anticipated costs of any such recommendations.

Section 4. Records

The Community Preservation Committee shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Community Preservation Fund. The Committee shall also keep records of any real property interest acquired, disposed of or improved by the Town upon its recommendation, including the names and addresses of the grantors or grantees and the nature of the consideration. All such records and accounts shall be public records.

Section 5. Amendments

This by-law may be amended from time to time by a majority vote of the Town Meeting, consistent with the provisions of the Community Preservation Act.

Section 6. Severability

In case any section, paragraph, or part of this by-law is declared invalid or unconstitutional by any court of competitive jurisdiction, every other section, paragraph or part shall continue in full force and effect.

Section 7. Definitions

Terms used in this by-law which appear in the Community Preservation Act shall have the respective meanings as set forth in the Community Preservation Act.

Effective Date

The foregoing by-law shall become effective only upon (a) completion of compliance with all requirements of Chapter 40, Section 32 of the General Laws respecting the adoption of general by-laws, and (b) the acceptance by the voters of the Town of **Sections 3 through 7** of the Community Preservation Act, as approved by the 2002 Annual Town Meeting under Article 9 of the Warrant therefor, pursuant to a ballot question presented at the next regular municipal or state election in accordance with **Section 3(f)** of the Community Preservation Act. If the ballot question described above is approved, each appointing authority shall make its initial appointment(s) to the Community Preservation Committee not later than thirty (30) days following such approval.

Appendix 1

UNDERGROUND STORAGE TANK

<u>Installation Date</u>	<u>Final Removal Date</u>
1975	December 31, 1995
1976	December 31, 1996
1977	December 31, 1997
1978	December 31, 1998
1979	December 31, 1999
1980	December 31, 2000
1981	December 31, 2001
1982	December 31, 2002
1983	December 31, 2003
1984	December 31, 2004
1985	December 31, 2005
1986	December 31, 2006
1987	December 31, 2007
1988	December 31, 2008
1989	December 31, 2009
1990	December 31, 2010
1991	December 31, 2011

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