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# Floodplain – Shoreland Management Notes

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## Land Boom Continues

by Gary Heinrichs

A headline in last summer's Vilas County News Review announced that waterfront property values had risen over 50% in two years. Oneida County has been breaking records every year in the number of building and sanitary permits issued. Talk to a real estate agent about waterfront properties in many popular vacation areas and you will find there isn't much to choose from.

That old cliché about land - "they ain't making it anymore" - has taken on a lot more significance in Wisconsin in recent years. While formerly confined to the crowded urban playgrounds in southeast Wisconsin (Waukesha County, Lake Geneva, etc.), complaints about overcrowding, overuse, environmental degradation, competing interests, and

decline in the "quality of life" have surfaced in recent years throughout the state.

From formerly pristine lakes in northern Wisconsin to rapidly urbanizing waterfront areas in the Fox River Valley, the cry is the same: "How do we stop growth? How do we control growth? Why isn't it like it used to be?"

The answer, of course, isn't simple. Seeking privacy, beauty and relaxation, the 19th century upper class retreated to the lakes in southeast Wisconsin. After World War II, the rise of the middle class and the improved highway system spurred the development of central Wisconsin lakes. The generation that followed found their dream destination in the remote northwoods. But what about the generation after that and the generation after that? What are the boundaries? Given the constraints of income, leisure time and land supply, how far are people willing to travel for pleasure? Have we reached that boundary, that point beyond which people are unwilling or unable to go to secure their little piece of heaven?

Longtime residents of vacation areas may argue we have exceeded the limits of reasonable growth and that development should be cut off - period! Well-heeled retirees from urban areas might say that is nonsense - the development potential is

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unlimited, it just takes more money and time nowadays. The reality is somewhere in between. Certainly there is more land available for development, but at what cost to the resource base and the attractiveness of the area for both residents and tourists.

The growth patterns and market forces fueling the demand for waterfront property seem insatiable. The United States is a leisure society and will remain so. While the average work week has not decreased noticeably in the last decade, flexible work schedules, tele-commuting, smaller families, and the growth in medium-size urban areas has made the vacation home more accessible and feasible for more people.

And who are the consumers who compromise the backbone of the leisure society? The well educated, well-off middle class professionals with the time and money to indulge their getaway fantasies - the baby boomers. As the leading edge of the boomer population nears 50 and has entered their peak earning years, they are in a position to afford what Wisconsin has to offer - pristine lakes and rivers for a second home.

And while there is speculation that the average retirement age may increase for much of the working population, those boomers with the money to buy waterfront properties may actually retire younger than previous generations. These factors, combined with the development of better highways for access, and the desire to escape the stress of urban living and high pressure careers guarantees that the waterfront building mania will continue.

As more people with more income compete for fewer desirable properties, the market will make an adjustment. In a perfect world, developers would tell eager buyers, "sorry, the environmentally suitable lots are gone,

try Minnesota." In our world, the wetlands, floodplains, and other critical areas will be developed. Hardships are demonstrated, variances are granted, compromises are made, and the environment suffers.

Wildlife habitat is destroyed by over-development, fish spawning areas are affected by wetland disturbances, groundwater recharge areas are diminished by more wells, floodwater storage is lost to excessive fills along river banks, water quality and shoreline protection suffer from the removal of vegetation. Factor in failed septic systems, air and noise pollution, crowded highways and congested lakes and you have environmental and recreational hell.

It's a given that we can't stop the development of recreational properties. It's unlikely that we would even if we could. Protection of private property rights - including the right to develop - is a cornerstone of the American way of life. But protection of our natural resources and insuring the quality of life for everyone are equally valid goals. Ignorance and greed will always be threats to these goals. Large-scale development, illegal filling/drainage, speculation, urbanization, and commercialization will always be with us. The key is how do we manage all the competing interests to maximize environmental protection and our quality of life while allowing private property owners a reasonable return on their investment?

Monitoring and enforcement measures will always be necessary, but many communities are moving beyond these reactive measures and adopting more proactive strategies for insuring environmentally compatible waterfront development. Lake associations are an excellent tool for educating and informing property owners about

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environmental regulations and, at the same time, involving them in the management of the resources they cherish. Associations have been active in water quality monitoring, assessing and remediating failed septic systems, restoring wildlife and fish habitat, and conducting inventories of endangered species.

Advisory groups comprised of local citizens interested in resource protection can augment the limited staff in many communities and provide information, experience, and the skills necessary for improving water management programs. Comprehensive land use policies provide the framework needed to render consistent and equitable decisions for all property owners. Education gives people the tools needed to make informed decisions. It encourages participation in the regulatory process and demonstrates the need for sound environmental regulations.

By combining old and new approaches to environmental regulation, those officials responsible for protecting natural resources can do a better job. If we only measure our success by the number of permits or citations issued, we are not doing our jobs. True environmental management only happens when the users of the resources are involved in the management of them. Asking for the assistance of the well-educated and highly skilled users of our lakes and rivers is the best long-term solution to insuring their protection. Property owners are never shy about asserting their rights. Now it is time they accept their responsibilities. By utilizing public/private partnerships for management of our lakes and rivers, we can share the credit for their protection and the blame for their demise. Which way the pendulum swings is up to these users.

## **Federal Subsidies Hurting Wetlands**

Various federal programs designed to boost the economy have done the opposite for wetlands. According to Interior Secretary Bruce Babbitt, many of these initiatives contradict basic economic principles and harm the environment. He named flood-control projects, farm loans and price supports, subsidies for road and housing construction in wetland areas, and tax incentives for the timber industry that encourage wetland conversion.

Federally financed flood-control projects and federal import quotas on sugar have contributed to the degradation of the Florida Everglades by promoting agricultural development. While changes in these programs are supported by many environmentalists, Congressional resolve to take action is unlikely due to the widespread backing for these programs among trade organizations.

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## **NFIP Unveils New Rating Service**

A new flood zone determination service administered by the National Flood Insurance Program may lighten the workload for local zoning officials. Insurance agents taking advantage of this new service will have the necessary flood zone information within 24 hours of placing their order. This program is an expansion of the AURORA telephone application hot-line.

To place an order, an agent calls 1-800-638-6620, selects #4 for the NFIP rating service, and requests an AURORA application. The agent will need to provide producer information, insured name/address, mortgagee information, community &

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building information, and lowest floor/base flood elevation for Post-FIRM construction.

The cost is \$10 per certification, which is guaranteed and supported with an errors and omissions policy. Besides a certified flood zone, the agent will receive the community number, map panel/date, community status, date of entry, flood zone description, BFE, and copies of the FIRM.

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## **Be Persnickety when Amending Ordinances**

by Gary Heinrichs

Persnickety, as defined by Webster, is an adjective describing someone who has extremely exacting standards. When the time comes to amend your ordinances, be persnickety. If you fail to be persnickety, you may instead be perturbed...as was a small town in Tennessee recently.

The town amended its ordinance in 1988 to allow mobile homes only in mobile home parks. Previously, mobile homes were allowed on single family lots under certain conditions. Guess what happened next? That's right. Someone moved a mobile home onto a single-family lot in the town. When the owner applied for a building permit, they were turned down. The property owners' requests to have the property declared outside the town limits or to be granted a variance met with no success. Their efforts to have the ordinance repealed also went nowhere.

Finally the town sued to permanently bar the use of the mobile home as a residence and to require removal of the home from the property. The trial court found for the town.

The property owner appealed, challenging the town's power to bar use of the trailer as a residence and claiming the town failed both to give notification of the amendment hearing and to publish the amended ordinance.

The appeals court found for the plaintiff, declaring the zoning ordinance invalid and reversing the trial court's ruling that the property owner had violated the ordinance. The town had failed to give the minimum hearing notice required by state law and had not published a complete summary of the ordinance as required.

In Wisconsin, ordinance amendment procedures normally call for the notice of public hearing to be published twice in consecutive weeks in the local newspaper, with the second notice being at least seven days before the hearing. The ordinance amendment, once passed, can be either published in its entirety in the newspaper or incorporated into an approved code of ordinances, with sufficient notice published in the newspaper that the new amendment is available for review at the appropriate government office.

By being persnickety, local officials can avoid legal challenges to ordinances, win newfound respect among their peers, and sleep better at night. Persnickety - it pays!

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## **CRP Debate in Full Swing**

As the first contracts signed under the Conservation Reserve Program (CRP) expire next year, a national debate is brewing over the future direction of the program, which pays farmers an average of \$50 an acre annually to keep highly erodible land in vegetative cover. To date, CRP has

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taken 36.5 million acres of sensitive lands out of agricultural production. Originally designed to reduce surplus commodity supplies that were depressing prices, it also benefited the environment by controlling soil erosion, improving water quality, enhancing wildlife habitat, and increasing recreational opportunities.

The Soil and Water Conservation Society (SWCS) is recommending extending the program, but refocusing it exclusively on natural resource conservation. Projects would be prioritized according to environmental benefits and protection of water quality would be the primary goal of new contracts. Permanent easements, as used in the Wetlands Reserve Program, would be the preferred arrangement.

The formation of state interagency committees to set priorities and oversee program implementation is recommended. Local governments and private organizations may also play a role in such activities as critical wildlife habitat. By forging federal/state/local partnerships, more informed selection of targeted lands and more local involvement is possible. By removing sensitive lands from intensive cultivation, the CRP can make a lasting contribution to water quality enhancement and overall environmental protection in the United States.

involved need to understand their responsibilities and how their role fits into the larger picture of federal and state flood loss reduction efforts. You need to know how your function relates to what other NFIP users do. The following is a summary of major NFIP activities and how the individuals involved with those actions should respond to assure the program's goal of reducing flood losses.

### **The Public Sector**

Local Building and Zoning Officials: Must interpret and enforce floodplain regulations in the same manner and with the same aggressiveness as they would any other building or zoning requirement; and must maintain sufficient information in the permit file system to allow FEMA and State officials to determine compliance and to allow insurance agents, realtors, and bankers to perform their NFIP-related tasks; (Properly constructed new buildings in the flood hazard areas will pay very low flood insurance premiums, but improper construction will pay very high rates for insurance, rates so high as to render new construction essentially unsellable); keep FEMA and the State advised of natural or man-made changes to the floodplain so the floodplain maps can be kept current; train replacement staff in the NFIP's requirements, respond to requests by insurance agents, lenders, and State and Federal officials for NFIP Elevation Certificates.

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### **The National Flood Insurance Program: A Public-Private Partnership**

By David Schein, Senior Program Specialist, Federal Emergency Management Agency, Region V

In order for the National Flood Insurance Program (NFIP) to work, all the players

Local Community Elected Officials: Adopt and amend floodplain regulations to keep the floodplain management ordinance or resolution in compliance with Federal and State requirements; give visible support to staff enforcing the regulations; provide the necessary financial resources to carry out the local responsibilities; maintain flood

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insurance in force as necessary on public buildings.

State-NFIP Coordinating Agencies: Assist FEMA in implementing the NFIP among local communities and other State agencies; identify communities needing floodplain mapping; enforce State floodplain management regulations in accordance with NFIP requirements; assist lenders, realtors, and insurance agents with their responsibilities; act as an intermediary between the Federal government and local governments; and explain the NFIP and its implementation to affected citizens, trade groups, and others.

FEMA: Administer and coordinate the NFIP; reply to inquiries concerning local flooding; map floodprone areas and distribute floodplain maps; provide flood insurance; train insurance agents and lenders, both by FEMA staff and FEMA's flood insurance training contractor, Computer Sciences Corporation; integrate floodplain management into all Federal actions in accordance with Federal regulations and executive orders; reply to inquiries from citizens and Congressional staff; fund State NFIP coordinating agencies; promote floodplain management and flood insurance; provide Federal flood disaster assistance in Presidentially-declared Major Disasters.

Federal Banking Instrumentalities: Examine Federally-insured and regulated lending institutions to assure mandatory flood insurance purchase requirements are adhered to; publish guidance on flood insurance requirements and train bank compliance officers.

Other Federal Agencies: Provide assistance to FEMA and other local and State governments in identifying flood hazards;

discourage new floodplain development; construct flood control projects in accordance with legislation, regulation, and executive orders; avoid participating in new projects in communities not participating in the NFIP; comply with floodplain management requirements in all activities affecting floodplains; respond to Congressional inquiries.

State Insurance Commissioners: Provide flood insurance information to insurance agents; investigate complaints regarding flood insurance; keep State licensing examinations current regarding the NFIP; cooperate with FEMA and the State NFIP coordinating agency in educating insurance agents.

### **The Private Sector**

Insurance Agents: Write flood insurance policies; advise clients on purchasing flood insurance (both inside and outside of flood hazard areas); work with realtors and lenders in providing flood insurance information and coverage when needed; attend NFIP training seminars and workshops to keep abreast of latest NFIP requirements and products.

Lenders: Require flood insurance on new and existing loans where appropriate in accordance with Federal regulations and individual risk management decisions; assure flood insurance policies are renewed as required; provide accurate information to borrowers about Federal flood insurance requirements at loan commitment; assure secondary mortgage market (Fannie Mae, Freddie Mac, etc.) flood insurance requirements are met at loan origination and at sale; provide written notices to borrowers (at least 10 days prior to closing) about floodprone nature of property and whether Federal flood disaster assistance will be available; have consistent printed internal

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policies regarding flood insurance, Letters of Map Amendment, waiving the flood insurance requirement, and risk management decisions; attend NFIP training seminars and workshops as well as industry flood insurance training.

Realtors: Advise clients on flood hazards associated with the purchase of real estate; maintain a set of floodplain maps for the local area; explain the minimum requirements of the mandatory flood insurance purchase rules; work with lenders and insurance agents to obtain flood insurance where required; disclose information on flood hazards in accordance with State or local disclosure laws and industry ethic requirements.

Consulting Engineers: Provide advice and assistance to local communities and private citizens regarding floodplain mapping, new floodplain developments, changes to floodplain designations, proper floodplain construction techniques, and stormwater management activities; provide new floodplain models local officials according to NFIP criteria; respond to requests for topographic and planimetric surveys, data for Letters of Map Amendment or Letters of Map Revision, and related matters.

Builders: Comply with local, State and Federal floodplain development regulations; provide required proposed and as-built data (floor elevations, surveys, etc.) to local building officials; advise customers of floodplain construction techniques and alternatives; avoid exacerbating existing flooding conditions; and have contractors (engineers, architects, surveyors, etc.) advise appropriate government officials of any changes to designated floodplains as a result of filling, excavating, bridge, culvert or sewer construction, etc.

Surveyors: Provide floodplain surveys (plats, NFIP Elevation Certificates, topographic data, etc.) for public and private clients in accordance with established industry accuracy standards; understand NFIP terminology such as base flood elevation, lowest floor, reference level floor, Letter of Map Amendment, etc.

Appraisers: Appraise property for lenders according to established industry standards; understand significance of floodplain location; be familiar with NFIP terminology (such as Special Flood Hazard Area, floodplain, floodprone, area of minimum flood hazards, A Zone, B Zone, C Zone X Zone, etc.) and NFIP mapping standards so clients will receive accurate information regarding property value and location relative to identified flood hazards; maintain a set of floodplain maps for the firm's service area; provide photocopies of current floodplain maps with all appraisals; be willing to re-evaluate an appraisal when presented with new or more complete information regarding the floodplain; be clear on what the federal minimum requirements are versus any more restrictive individual mortgage lender's requirements (such as any portion of the lot or property being in the floodplain), and annotate the appraisal form correctly.

The Home-Buying Public: Become aware of floodplain mapping and consider the floodplain's implications when deciding where to buy a home; be willing to build in accordance with sound floodplain development standards as prescribed by local, State, and Federal regulations; purchase flood insurance to protect the investment (even outside of identified floodplain areas); and convey the floodprone nature or floodplain/non-floodplain location of the property to prospective buyers.

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## **Needed: Efficient Land Use Appeals**

by Arthur C. Nelson

When the system for making local land use decisions operates smoothly, property owners appear at a public hearing of the local planning or zoning board, make their case, and leave with their permits and approvals. But often the system breaks down. In many instances elected officials and their staffs need further information or request changes that require additional public hearings. In complex or controversial projects boards can take two or three years to reach a decision.

When landowners want to appeal a decision, they go to the state where the court take depositions, hears from expert witnesses, and make a decision that may well confirm that of local authorities. Just as often, however, the state court finds that the local government erred in applying certain technical provisions of local laws and returns the case to the local level, where the process begins anew. Such cases may not be resolved conclusively for ten or more years.

In fairness to land use decision-makers, most cases require balancing complex and often conflicting factors: planning goals, environmental protection mandates, capacity restrictions for roads, waterlines, and sewers, and historic preservation guidelines, as well as other regulatory requirements. The issues are complex and defy simple judgments.

However, state courts are typically not efficient at resolving local land use disputes. The cumbersome process imposes a considerable burden on the court system, and the resulting delays frustrate all parties,

from property owners to community interest groups and local boards.

The states of Florida and Oregon have experimented with some alternatives to judicial appeals for resolving land use disputes. In Florida, those who want to appeal land use decisions made by the planning commission go to administrative law judges in the state Division of Administrative Hearings (DOAH), who hold proceedings similar to a trial. By law, the hearing must occur within 90 days of the notice of the appeal, and the judge must render a decision within 120 days after the hearing. The governor's cabinet must approve DOAH decisions, and final orders can be appealed to the district court of appeals and to the state supreme court.

Oregon's program, which reforms both local and state proceedings, is part of the statewide growth management program. Under this system local governments have 120 days to decide on a development application or they waive the right to reject it. Appeals go to the Land Use Board of Appeals (LUBA), a special court staffed by three judges who are knowledgeable in land use law. LUBA convenes a hearing within 120 days of receiving the notice of appeal. Neither side in a dispute can present to LUBA anything except the information already contained in the locally developed record, and LUBA decides only if a local decision is consistent with state planning law. LUBA can send a case back to the local governments to develop a better record, or it can accept or reject the appeal. Appeals from LUBA go to the state appeals court and from there to the state supreme court. However, the supreme court rarely hears land use cases. Instead it usually defers to LUBA judgments.



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