

Advisory Committee Reviews Nonconforming Issues

An advisory committee helping update state shoreland protection rules has proposed relaxing limits on maintaining or repairing homes closer to the water than current rules allow if steps are taken to minimize the structures' impacts on water quality, fish and wildlife habitat and natural beauty. Such steps could include maintaining or planting native plants and trees in the area between the house and water.

Committee members agreed in principle that owners of such "nonconforming structures" should be allowed to conduct maintenance work and make repairs regardless of the cost. But if the owners want to replace the structure with a bigger one or pursue a major reconstruction, they need to move the home back to a location that meets current setback standards.

Such an approach would abide by court rulings that nonconforming structures must be regulated so that they eventually meet current standards. But it would allow the owner's desire and market forces – not a financial threshold set by government — to determine when the owner moved their structure back, some members said.

Wisconsin's shoreland protection rules, mandated by the Legislature's 1966 Water Resources Act and written by DNR the

following year, are found in Natural Resources Chapter NR 115 of the Wisconsin Administrative Code. The rules set minimum standards in unincorporated areas, including lot sizes, how far structures are set back from the water ("setbacks"), and limits on removing trees and other plants. The law required counties to adopt ordinances that meet these or more protective standards.



Home along the Yahara River, Town of Dunn, Dane County

Now, both NR 115 and most Wisconsin counties allow people to maintain and make unlimited nonstructural repairs to their nonconforming structures, but limit the amount of structural repairs, expansions and improvements they can do. In many counties, the costs cannot exceed 50 percent of the structure's current equalized assessed value or it must be moved back to meet the setback requirements.

Al Shea, who chairs the advisory committee and who directs DNR's Bureau of Watershed Management, said the advisory committee's conceptual agreement on the principles recognizes the legal need to regulate nonconforming structures, but more importantly, "recognizes the significant number of nonconforming structures in the shoreland zone are going



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Tennessee Mandates Training for Planning Commissioners and BOAs

In a what may be a developing nationwide trend, Tennessee now requires training for members of planning commissions and zoning boards of appeal. Tennessee's law follows in the footsteps of a similar law passed in Kentucky. The Planning Commission and Board of Zoning Appeals Training and Continuing Education Act of 2002 (Senate Bill 2412, Ch. 862) specifies this requirement:

Each planning commissioner shall, within one year of initial appointment and each calendar year thereafter, attend a minimum of four hours of training and continuing education in one or more of the subjects listed in subdivision (5) of this subsection.

The topics for which planning commissioners must receive training include: land-use planning, zoning, floodplain management, transportation, community parlia-

mentary procedure, public hearing procedure, land-use law, natural resources and agriculture land conservation, economic development, housing, public buildings, land subdivision, and powers and duties of the planning commission.

The act also requires professional planners or other administrative officials whose duties include advising the planning commission to obtain eight hours of training each year. Both Kentucky and Tennessee see education as an important component of good planning. The legislation allows local legislative bodies to opt out of the provisions "by passage of a resolution or ordinance, as appropriate" and opt back in at a later date.

Wisconsin has tried unsuccessfully to develop similar legislation, but the State does require that at least one member of Boards of Review for cities, villages and towns attend a training session within two years of the Board's first meeting.

Floodplain and Shoreland Management Notes

"Floodplain and Shoreland Management Notes" is published by the Wisconsin Department of Natural Resources, Bureau of Watershed Management. Its purpose is to inform local zoning officials and others concerned about state and federal floodplain management and flood insurance issues, shoreland and wetland management, and dam safety issues. Comments or contributions are welcome. Contact Gary Heinrichs, Editor, at 608-266-3093 or Gary.Heinrichs@dnr.state.wi.us

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Photographs in this issue were provided by D. Breneman, D. Tvedt, and C. Wagner.

Understanding the Authority to Regulate Nonconforming Structures

While the regulation of nonconforming uses is a common component of ordinances, many communities are questioned on their authority to regulate to nonconforming structures.

Section 59.69 (4), Wis. Stats., authorizes counties to adopt general zoning and specifies that, in addition to regulating and prohibiting uses in zoning districts, counties are authorized to “regulate and restrict” the location and size of buildings and other structures.

Court decisions have held that the power to “regulate and restrict” necessarily includes the power to prohibit or regulate changes to existing nonconforming buildings. Section 62.23 (7), Wis. Stats., which authorizes the adoption of zoning by cities and villages, includes a similar broad grant of zoning power to regulate the size and location of buildings and other structures.

Section 59.692, Wis. Stats., which requires counties to adopt shoreland zoning ordinances and authorizes the adoption of floodplain zoning ordinances that are required by s. 87.30, Wis. Stats., provides that “Except as otherwise specified, all provisions of s. 59.69 apply to ordinances and their amendments enacted under this section.”

These statutory provisions give counties, cities and villages broad powers to regulate the location and size of buildings and other structures, including those that were in existence at the time that an ordinance or ordinance amendment was adopted, not just new construction. The constitutionality of regulating pre-existing uses and pre-existing structures under a zoning ordinance has been upheld numerous times by federal and state courts, beginning with court decisions in the 1920’s and 1930’s.

While Sections 59.69 (10) and 62.23 (7), Wis. Stats. provide statutory limitations on the broad zoning authority that is granted to counties, cities and villages elsewhere in the statutes, s. 59.69 (10) and 62.23 (7) are **not** the statutes that autho-

rize the regulation of nonconforming uses and nonconforming structures.

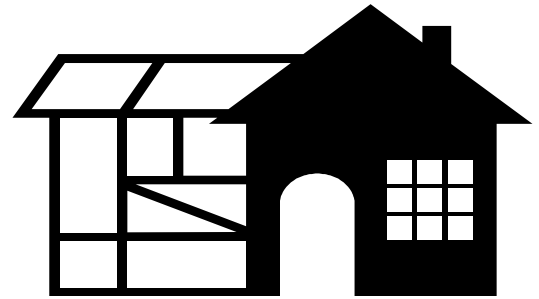
Instead, s. 59.69 (10)(a) and s. 62.23 (7)(h) impose limits on the authority of counties, cities and villages to regulate nonconforming uses. The fact that nonconforming structures with conforming uses are not specifically mentioned in these sections of the statutes only means that there are no statutorily imposed limits on how counties, cities and villages can regulate nonconforming structures with conforming uses.

The first sentence of Section 59.69 (10)(a), Wis.

Stats., clearly only applies to nonconforming buildings or premises used for trade or industry. However, it is not clear whether the remaining sentences in s. 59.69 (10)(a) were intended to only apply to nonconforming commercial and industrial uses.

Regardless of how narrowly or broadly s. 59.69 (10)(a) is interpreted, that statute clearly **allows** counties to use a “50% rule” to regulate buildings and premises that are used for nonconforming uses, but does not require them to do so. Section 62.23 (7)(h), Wis. Stats., requires the use of a “50% rule” but that statute only applies to city and village zoning ordinances, and therefore does not apply to county shoreland zoning.

In *State ex rel. Ziervogel v. Washington County Board of Adjustment*, Court of Appeals No. 02-1618, 2003 WL 1542119, March 26, 2003 (recommended for publication), Judge Richard Brown, in a concurring opinion, expressly acknowledges the authority of counties to place limits on nonconforming structures in shoreland zoning ordinances. This case is discussed in more detail on page 6.



Model Floodplain Ordinance Workshops Slated for Summer

Wisconsin's floodplain management program, which depends on accurate floodplain mapping, comprehensive floodplain regulations and affordable flood insurance, is poised for major updates in two of those three disciplines. While dates have not been set yet, the department is planning to schedule seven workshops to discuss changes to the Wisconsin model floodplain ordinance and to give updates on FEMA's map modernization program and how it will impact communities with floodplain mapping concerns. The workshops, which will start in July and conclude in September, will be held in or near Eau Claire, Green Bay, LaCrosse, Madison, Milwaukee, Rhinelander and Spooner. The workshops will be held starting in July and concluding by the end of September.

participating in the National Flood Insurance Program (NFIP). In the 12 years since the last updates, a number of deficiencies have been noted and suggestions for improvements made by both FEMA and department staff.

While some of the model ordinance revisions are reminders to communities concerning process issues, there are a number of mapping, development standards and definition changes that will need to be adopted by all communities in order to remain in good standing in the NFIP.

Some of the critical changes to the model are outlined below. The complete, revised model ordinance will soon be available on the department's website - www.dnr.state.wi.us/org/water/wm/dsfm/flood/title/htm - along with an annotated version with explanatory notes. For local communities without internet access, hard copies will be available at the meeting or by requesting a copy from Gary Heinrichs, department floodplain planner, (608) 266-3093, or Gary.Heinrichs@dnr.state.wi.us.

Maps. The term "base flood elevation," as used by FEMA, can differ from the regional flood elevation as used by the department and most communities. Accordingly, changes have been made to s. 1.5 describing those differences, which agencies are responsible for reviewing and approving which maps and amendments and the need to apply for a Letter of Map Change when lands are proposed to be removed from the FEMA-identified floodplain

General Development Standards.

This language which has been added to s. 1.5 introduces the concept of "reasonably safe from flooding," which is used by FEMA to describe minimum construction standards for building in floodplain areas. This includes adequate anchoring of the structure, use of flood-resistant materials and building practices, and proper elevation of service and mechanical equipment.



Private campground along the Yahara River, Town of Dunn, Dane County

Model Ordinance Changes

After many meetings, the department and the Federal Emergency Management Agency (FEMA) have come to agreement on proposed changes to Wisconsin's Model Floodplain Ordinance. This ordinance, which has not been updated since 1991, is the foundation for the 500 communities

Hydraulic and Hydrologic

Analyses. The department has removed language in s. 2.1 which allows increases in the flood elevation of more than one foot with a FEMA waiver since FEMA no longer grants these waivers.

Campgrounds. Language has been added to s. 2.4 of the model that reflects minimum standards in Wisconsin Administrative Code and federal regulations.

Recreational Vehicles. Language has been added to s. 4.3 of the model that reflects minimum standards in federal regulations.

Nonconforming Uses. Based on statutory changes in s. 87.30(1)(d), Wis. Stats., language has been added to s. 6.1 of the model to allow the rebuilding of nonconforming buildings that are damaged or destroyed by a non-flood disaster, provided that the minimum requirements of the federal regulations are met.

In addition to these changes, a number of definitions have been modified to meet minimum FEMA requirements and some new definitions have been added, including “new construction,” “mobile recreational vehicle,” “start of construction,” “substantial damage,” and “violation.”

Department staff will also be available to answer questions about the FEMA map modernization initiative. For fiscal year 2003, which ends on September 30th, Wisconsin will receive money to partially fund new countywide maps for Dane, Milwaukee, Ozaukee, Rock, Washington and Waukesha counties. While funding for the following year has not been determined yet, more information will be available in the coming months, which will be shared at the workshops.

If you have questions about the workshops, please contact Gary Heinrichs at the phone number or e-mail address listed earlier in the article.

Clarity Essential in Zoning Ordinances

When drafting or amending a zoning ordinance, there are some general concerns that one must anticipate to provide a clear, concise ordinance and understandable regulations.

Legalese is a much-reduced problem now that law schools emphasize drafting in plain language, but it still occasionally slips into modern ordinances and amendments. The drafter should always know why he or she is using particular language, and not parrot it solely because an existing ordinance or model uses the same language.

Vague language should always be avoided both to deter legal challenges and to make the ordinance a practical guide to which development and activities are permitted or not permitted. On the other hand, broad language in purpose statements is not only acceptable, but necessary.

The **numbering** system of a zoning code should be kept consistent, and the assignment of new section or chapter

numbers to amendments should be done with this goal firmly in mind. It should be clear to the reader which citations are internal (to other provisions in the zoning ordinance), to other ordinances of the jurisdiction, and to the enabling statutes.

Definitions are one area where drafting mistakes can have far-reaching effects. Key terms should be defined. Similarly, terms of art in the zoning and land-use field should be used and defined consistently with general practice instead of creating an idiosyncratic definition that confuses trained users such as officials, developers, and attorneys. The inclusion of substantive regulatory provisions in definitions should be avoided; otherwise, reading the substantive chapters of the ordinance alone would be inadequate to determine the applicable regulations.

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Court of Appeals Decision Reinforces “No Reasonable Use” Criteria for Shoreland Variances

In *State ex rel. Ziervogel v. Washington County Board of Adjustment*, Court of Appeals No. 02-1618, 2003 WL 1542119, March 26, 2003 (recommended for publication), the District II Court of Appeals refused to overturn the Washington County Board of Adjustment’s denial of a zoning variance.

In this case, property owners Richard Ziervogel and Maureen McGinnity argued that the Board ignored a balancing test that they contend was established by the Wisconsin Supreme Court in *State v. Outagamie County Board of Adjustment*, 2001 WI 78, 244 Wis. 2d 613, 628 N.W.2d 376, and *State v. Kenosha County Board of Adjustment*, 218 Wis. 2d 396, 577 N.W.2d 813 (1998). They argued that the Board should have balanced the public interest and the purpose of the zoning ordinance against their rights as owners of the property. As a result, Ziervogel and McGinnity claimed that the Board proceeded on an incorrect theory of law and its decision was arbitrary and unreasonable.

The Court of Appeals disagreed and found that the Board applied the proper standard of review in denying the request for a variance.

History

Ziervogel and McGinnity own a house on Big Cedar Lake in Washington County. The home was purchased as a summer home, but now they want to move there year-round and propose construction of a 10-foot vertical expansion to add bedroom, bathroom, and office space.

The house is a legal nonconforming structure, set back 26 feet from the ordinary high water mark (OHWM) of Big Cedar Lake. In June 2001, Washington County amended its Shoreland, Wetland and Floodplain Zoning section of the Washington County Code to prohibit any

expansion of an existing structure within 50 feet of the OHWM. In this case, the entire home is within 50 feet of the OHWM.

When denied a permit to construct the addition, Ziervogel and McGinnity applied for a variance to build the addition to the home. Ziervogel and McGinnity argued before the Board that their requested variance would not impair the public interest and that the proposed addition would not expand their legally nonconforming use because the proposed addition was a strictly vertical expansion. Ziervogel and McGinnity also argued that the expansion would not affect anyone’s enjoyment of the lake and the neighbors on both sides of their lot did not object.

The Board unanimously voted to deny the variance request, concluding that the denial “would not make the property useless”. Ziervogel and McGinnity filed an action for certiorari review of the Board’s decision, and the circuit court upheld the Board’s decision. Ziervogel and McGinnity then filed an appeal.

Discussion

Ziervogel and McGinnity’s basic argument was that both *Kenosha County* and *Outagamie County* require a two-part test to determine if a variance should be granted: (1) whether the proposed variance violates the purpose of the zoning ordinance at issue, and (2) a determination of whether the property owners have any reasonable use of the property if the variance is denied. They argued that it is only after a determination that the requested variance is in conflict with the public interest that the “no reasonable use” standard applies, and the Board failed to utilize this test. The Court of Appeals disagreed.

Ziervogel and McGinnity relied extensively on statements made in the lead

opinion in *Outagamie County*, but the Court of Appeals pointed out that only a small portion of that decision is of any precedential value and “the portion with precedential value in no way overruled or invalidated the provisions of *Kenosha County*.” ¶ 11.

The Court of Appeals also held that the argument made by Ziervogel and McGinnity, that there is a two-part test, conflicts with the clear language in *Kenosha County* that establishes the “no reasonable use” standard. The Court of Appeals said: “The *Kenosha County* court explicitly stated numerous times throughout the opinion that [b]oth the statute and the ordinance specify that a variance applicant show ‘unnecessary hardship’ to justify receiving the variance.’ *Kenosha County*, 218 Wis. 2d at 409. The *Kenosha County* court unequivocally concluded that ‘unnecessary hardship requires that the property owner demonstrate that without the variance, he or she has no reasonable use of the property.’ *Id.* At 398.” ¶ 22.

The Court of Appeals concluded that both the *Kenosha County* decision and the Washington County Code require that the applicants in this case must prove that they have no reasonable use of the property without the requested variance. The court concluded that “Ziervogel and McGinnity still have reasonable use of their property and the Board properly denied their request for a variance.” ¶ 29.

Concurring Opinion

Another important aspect of this decision is the concurring opinion written by Judge Richard Brown. In his opinion, Judge Brown comes to the same conclusion as the majority of the court, but for somewhat different reasons. He expresses the opinion that the Wisconsin Supreme Court established a two-part test in *Snyder v. Waukesha County Zoning Board of Adjustment*, 74 Wis. 2d 468, 247 N.W.2d 98 (1976), and that *Kenosha County* merely followed *Snyder*.

He includes an excellent discussion of the concurring opinion written by Supreme Court Justice N. Patrick Crooks in

Outagamie County and points out that Justice Crooks’ concurrence “teaches that there is no reason to hold on to the artificial distinction of ‘area variances’ and ‘use variances’ and of ‘unnecessary hardship’ versus ‘practical difficulties.’” ¶ 40.

Judge Brown believes that there is a misconception on the part of some people that “*Kenosha County* departed from *Snyder* and announced a stringent ‘no reasonable use’ standard for every kind of variance request.” ¶ 50. Judge Brown argues that *Kenosha County* established that shoreland variances must be held to a higher standard than variances from other kinds of zoning ordinances: “We see that a requested variance in a shoreland zoning case, whether it is perfunctorily denominated by the landowner as an ‘area variance’ or a ‘use variance,’ nevertheless can defeat the whole purpose of the ordinance if granted. Thus, employment of the strict ‘no reasonable use’ standard is logically and environmentally correct where the shoreland zoning ordinance is concerned.” ¶49.

Judge Brown takes the position that for variances from ordinances other than shoreland zoning ordinances, zoning boards are not required to use the “no reasonable use” standard. He argues that under *Snyder*, (for cases other than shoreland variance cases, where *Kenosha County* controls, and floodplain variance cases, where *Outagamie County* controls) they must first look to the purpose of the ordinance and determine if the requested variance violates that purpose: “If the purpose of the ordinance is not hampered and the requested variance is truly trivial, then of course the zoning boards retain the power to grant the request without the landowner having to prove unnecessary hardship and, indeed, should do so under the law of *Snyder* and *Kenosha County*.” ¶ 51.

Judge Brown observes that “while variances were created by the courts to deal with ‘trivial’ adjustments to the ordinance, requests for area variances concerning land coming within a shoreland zoning ordinance could hardly be said to be ‘trivial.’ Such matters as setback lines, frontage requirements, height limitations

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and lot size restrictions are serious matters where our lakes, streams and rivers are concerned. These vital natural resources are not limitless and are not indestructible.” ¶ 47.

Copies of this decision can be found on the Wisconsin Court System website at: <http://www.wicourts.gov/ca/opinions/02/pdf/02-1618.pdf>

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to be there for some time.

“The revised rule needs to recognize that fact and provide for rights of property owners to, at a minimum, repair and maintain their homes, cabins and cottages,” he says. “The rule will need to focus on ways to mitigate the potential effects these structures have on natural resources, yet abide by the courts’ findings that those structures must eventually comply with current setback standards.”

Mitigation methods could include planting and maintaining a buffer of native plants and trees between the home and the water’s edge in the area known as the “primary buffer.” The primary buffer is the most critical area in terms of protecting water quality by filtering runoff from rooftops, driveways and other impermeable surfaces, providing habitat, and protecting scenic beauty by screening structures from neighboring properties and lake users.

The committee coalesced around the following principles:

- No expansions would be allowed to structures in the primary buffer and structures in the secondary buffer would be provided limited expansion options.
- Ordinary maintenance and repair that does not require a county administrative permit would not require mitigation, but repairs or projects triggering the need for a permit would.
- Property owners would be allowed to repair and maintain nonconforming struc-

tures subject only to mitigation requirements, but major reconstruction or replacement would require relocation on the property to a site that meets setback standards.

- When a property owner decides to undertake a project that requires mitigation, they would first be given credit for any “good stewardship” practices already existing on their property, and in some cases, no additional mitigation would be required.

The majority of committee members

agreed to wait to decide how big the primary buffer needs to be until after DNR conducts public listening sessions statewide later this year. At their January 30 meeting, committee members preferred a primary buffer of 35 feet or 50 feet.

The next advisory committee meeting is scheduled for June 24 in

Stevens Point. and will be addressing regulations concerning minimum lot sizes, impervious surface area limits, nonconforming lots, and setback averaging.

All materials for the advisory committee meetings are available on the DNR Web site: <http://www.dnr.state.wi.us>. From DNR’s home page, click on the “go to some topics” drop down menu and select “shoreland management” and look on the righthand side of the page for the latest news on the revision.



Monarch on blazing star, Monroe County

Drought Schmought! Flooding Is Still A Concern

9

Just because your backyard looks more like Death Valley than the Chippewa Valley, don't think that flooding can't happen. Officials from the DNR and the Federal Emergency Management Agency (FEMA) are encouraging property owners to purchase flood insurance policies now to protect themselves against future flood losses.

"Flooding can occur anytime, anywhere, particularly at this time of the year," said Anthony S. Lowe, administrator of the National Flood Insurance Program (NFIP), "and having flood insurance in place is one of the most important things people can do to help themselves recover from such an event."

Lowe warned that flood damage is not covered by homeowner's or business insurance policies. "This coverage must be purchased separately," he said, "and people need to keep in mind that there is a 30-day waiting period before a new flood insurance policy becomes effective. They must take steps to protect themselves well before the water starts to rise."

The NFIP makes federally backed flood insurance available to homeowners, renters and business owners in communities that adopt and enforce floodplain management ordinances to reduce future flood losses. Currently, more than 4.4 million policies are in force in nearly 20,000 participating communities, representing more than \$634 billion worth of coverage. The NFIP is self-supporting; claims and operating expenses are paid from policyholder premiums, not tax dollars.

Flood insurance can be purchased through most insurance companies and licensed property and casualty insurance agents. Currently, the average annual premium is \$396, and the average coverage amount is \$143,927. The maximum coverage amounts available for a single-family



home are \$250,000 for the structure and \$100,000 for its contents. Maximum coverages for businesses are \$500,000 for the building and \$500,000 for contents. Renters can also purchase up to \$100,000 of contents coverage for their belongings.

Lowe pointed out that flood insurance provides more complete protection for flood victims than does federal disaster assistance, which is quite limited and is available only if the President issues a major disaster declaration. In addition, federal disaster assistance is often in the form of a loan that must be repaid, with interest.

"Flood insurance is a much better deal, both for the flood victims and for the taxpayers at large," he said. "As more and more people assume responsibility for their own protection by purchasing flood insurance, fewer will need the federal government to bail them out after a flood."

*Mississippi River flooding
on French Island,
LaCrosse County, 2001*

Flood Insurance Explained

Flood insurance is available to all property owners and renters in communities participating in the NFIP, including almost 500 Wisconsin cities, villages and counties.

If you are unsure of your community's status, you can contact a local community official, your insurance agent or check out the FEMA Community Status Book, which is available online at <http://www.fema.gov/fema/csb.htm>.

FEMA publishes maps indicating a community's flood hazard areas and the degree of risk in those areas. Flood insurance maps usually are on file at the local planning and zoning or engineering office. A property owner may consult these maps to find out if the property is in an SFHA. Maps may also be ordered online or by contacting the FEMA Map Service Center (www.fema.gov).

Eligible Structures

Almost every type of walled and roofed building that is principally above ground and not entirely over water may be insured. This generally includes manufactured homes that are anchored to permanent foundations and travel trailers without wheels that are anchored to permanent foundations and are regulated under the community's floodplain management and building ordinances or laws. Contents of insurable walled and roofed buildings also may be insured under separate coverage.

Some Restrictions Apply

Some buildings cannot be covered, including those entirely over water or principally below ground, gas and liquid storage tanks, animals, birds, fish, aircraft, wharves, piers, bulkheads, growing crops, shrubbery, land, livestock, roads, machinery or equipment in the open, and most motor vehicles are not insurable. Most contents and finishing materials located in a basement or in enclosures below the

lowest elevated floor of an elevated building constructed after the FIRM became effective are not covered.

Flood insurance is not available for buildings that FEMA determines have been declared by a State or local zoning authority or other authorized authority to be in violation of State or local floodplain management regulations or ordinances. No new policies can be written to cover such buildings; nor can an existing policy be renewed.

Flood insurance cost is dependent on a number of factors, including: amount of coverage purchased; location; age of the building; building occupancy; design of the building; and, for buildings in SFHAs, elevation of the building in relation to the base flood elevation. Buildings eligible for special low-cost coverage at a pre-determined, reduced premium rate are single-family and one- to four-family dwellings located in Zones B, C, and X.

The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 mandate the purchase of flood insurance as a condition of Federal or Federally related financial assistance for acquisition and/or construction of buildings in SFHAs of any community. This includes all conventional loans which are sold on the secondary market to Fannie Mae or Freddie Mac. The purchase of flood insurance on a voluntary basis is frequently prudent even outside of SFHAs.

A major purpose of the NFIP is to alert communities to the danger of flooding and to assist them in reducing potential property losses from flooding. Therefore, FEMA determines flood risk through the use of all available information for each community. Historical flood data are only one element used in determining flood risk. More critical determinations can be made by evaluating the community's rainfall and river-flow data, topography, wind velocity, tidal surge, flood-control

measures, development (existing and planned), community maps, and other data.

Lender Coverage Requirements

For virtually every mortgage transaction, the lender reviews the current NFIP maps for the community to determine its location relative to the published SFHA. If the structure is within the SFHA and the community is participating in the NFIP, the borrower is then notified that flood insurance will be required as a condition of receiving the loan. A similar review and notification is completed whenever a loan is sold on the secondary loan market or perhaps when the lender completes a routine review of its mortgage portfolio.

Property owners who disagree with the lender's determination may submit a joint request with the lender to FEMA asking for a review. This request must be submitted within 45 days of the date the lending institution notified the property owner that a building or manufactured home is in the SFHA and flood insurance is required. In response, FEMA will issue a Letter of Determination Review (LODR). The LODR does not result in an amendment or revision to the NFIP map. It is only a finding as to whether the building or manufactured home is in the SFHA shown on the NFIP map. The LODR remains in effect until the NFIP map panel affecting the subject building or manufactured home is revised.

Insurance Coverage Waiting Period

There is normally a 30-day waiting period before flood insurance goes into effect. There are two exceptions:

- If the initial purchase of flood insurance is in connection with the making, increasing, extending, or renewing of a loan, there is no waiting period. The coverage becomes effective at the time of the loan, provided the application and presentment of premium are made at or prior to loan closing.

- If the initial purchase of flood insurance is made during the 13-month period following the revision or update of a Flood Insurance Rate Map for the community, there is a 1-day waiting period.

Flood Insurance And Disaster Assistance

For anyone who suffers a loss to real or personal property due to a flood disaster and subsequently files a claim for federal assistance, they must purchase and maintain flood insurance coverage for as long as they live in the dwelling. If flood insurance is not purchased and maintained, future disaster assistance will be denied. If the structure is sold, the current owner is required to notify the buyer of the house of the need to purchase and maintain flood insurance. If the buyer is not notified, suffers uninsured flood losses, and receives



Flooding in Hayward, 1941

Federal disaster assistance, the seller may be required to repay the Federal Government any Federal disaster assistance the buyer received.

Floodplain and Shoreland Management Notes

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