



Genesee/Finger Lakes Regional Planning Council

JOHN F. MARREN, Chair • ROBERT BAUSCH, Vice Chair • STEVEN M. LEROY, Treasurer • DAVID S. ZORN, Executive Director

Last Steering Committee Meeting Model Intermunicipal Floodplain Overlay District Local Law Project

Monday, June 11, 2018
11am – 1pm

Hilton Fire Department
120 Old Hojack Lane
Hilton, NY 14468

Attendees

- ✓ Stevie Adams, The Nature Conservancy
- ✓ John Gauthier, Greece Town Engineer
- ✓ John Caterino, Town of Greece
- ✓ Steve Olufsen, Monroe County Dept. of Planning & Development
- ✓ Dennis Scibetta, Parma Town Code Enforcement Officer
- ✓ Mary Binder, NYSDEC Western NY Flood Hub
- ✓ Jayme Thomann, G/FLRPC
- (Via Skype)
- ✓ Janet Thigpen, Southern Tier Central Regional Planning and Development Board
- ✓ Kathryn Friedman, University at Buffalo

Agenda and Minutes

Action Items from April 4

- Monroe County DRC's standard stream comment with suggestions on additional language to incorporate NAI.

Monroe County DRC provided a modified stream comment, which includes new language about “mitigating potential flood impacts on downstream properties,” to the Steering Committee. The comment has been submitted to DEC for comment, and will be incorporated into future application reviews:

Development Review Committee Stream Comment (**DRAFT**)

According to the New York State Department of Environmental Conservation (NYS DEC) and the United States Geological Survey National Hydrography Dataset (USGS NHD) it appears a portion of a stream is located on the subject property. Streambanks, sometimes called riparian zones or stream corridors, are the link between land and water, and the health of streams depends in large part on the condition of the streamside. Research has shown that naturally vegetated corridors along streams provide numerous benefits essential for human health and welfare. Healthy stream corridors can reduce flooding downstream; trap sediment; remove dissolved contaminants; provide shade; contribute leaf matter (important for insect food and fish habitat); provide wildlife habitat; offer recreational opportunities; and increase aesthetic value and desirability of a property.

In order to protect the stream corridor and prevent contaminants from entering the stream consider the following:

- Maintain a healthy, vegetated streamside buffer by preserving trees and shrubs along the stream edge.
 - Limit logging to removing large branches that fall into the stream and divert streamflow and cause erosion.
 - Mitigate potential flood impacts on downstream properties.
 - Control water flow through the streamside buffer to filter contaminants and reduce erosion.
 - Reduce erosion by managing stormwater runoff to prevent channelized flow.
 - Minimize impervious areas near the streamside by using stone or brick instead of pavement for driveways and walkways.
 - Exclude vehicles, livestock, or excessive pedestrian traffic.
 - Reduce or eliminate buffer area exposure to fertilizer, herbicides, pesticide, animal waste, household and automotive chemicals, trash, debris, and piles of leaf litter.
 - Maintain septic systems.
- Update on Flood Hazard Reports, Army Corps of Engineers.

ACOE provided three reports, dating from about 1969 to 1975, which have been incorporated into the model local law. Jayme will alert the municipalities contained within the studies. Jayme will also contact Scott McCarty, Operations Manager-GIS, Monroe County GIS Services Division, about the ability to geospatial reference these PDF documents in order to provide a GIS for municipal use and enforcement of the locally defined floodplain. *“Georeferencing maps and digitizing their elements is occasionally time consuming, but is done all of the time. The biggest concern with georeferencing these maps is the accuracy that you would be able to achieve. Georeferencing will give the “best fit” based on available control points within the hard copy maps, which in this case, would be street centerlines. The fact that you are trying to match today’s centerlines with roads that were most likely drawn by hand in 1975 will compound the error.*

You mentioned this information would be used to enforce the locally defined floodplain. I would not trust the accuracy of a georeferenced map when it comes to defining a floodplain. Depending on how much the PDF map is skewed in the georeferencing process, the floodplain boundaries could be several feet off or more. That being said, the municipality will have to make the decision on what data they will use to back the ready-to-use local law.”

- Research on local hazard disclosure laws.

Kate Friedman provided research on model ordinances in Florida and California (attached). Kate will look further into penalties for nondisclosure. Janet will contact ISO for examples of local regulations requiring real estate disclosure. *“For CRS credit, statutory or other legal mandate that real estate agents disclose the hazard is not needed to obtain credit for DFH. The credit is based on documentation that real estate agents disclosing the hazard, not on why they are doing it. Attached is an example of DFH for Mashpee, MA.”*

New Items

1. Webinar to be scheduled (possibly through DEC’s Climate Smart Communities webinar series).

This project will be delivered through the Climate Smart Communities webinar series on September 13, 2018. Jayme and Stevie will present. Ask Scott Copey if he would like to talk about what the Town plans to do with the model language. Also, there is potential for a presentation at the G/FLRPC Fall Local Government Workshop.

2. Review final draft Intermunicipal Floodplain Overlay District Local Law.
 - a) Add FEMA statistics about flood claims outside of the SFHA to Article I.
 - b) Add disclaimer about full compliance with the NFIP.
 - c) Add historic flood data to Article III and add an annotation for local hazard disclosure.
 - d) Add “list of receiving municipalities” to Article V.

Presented By: **Nicholas Blair**
 CC&I Assoc. of REALTORS, Inc

[Picture](#)

Listing Summary

Listing #21610265	18 Nick TR, Popponeset, MA 02649	Active (12/11/16)		
\$849,000 (LP)	Bed: 3*	Baths: 2 (2 0) (FH)	Sq Ft: 1763*	Lot Sz: 6534*
	Town: Mashpee	Village: Popponeset	Yr: 2003*	

Remarks

This Popponeset contemporary beach home is in a perfect location! It's set back in the community for a more private feel, yet it is a short straight walk to Nick Trail Beach, which is one of the most beautiful stretches of beach in Popponeset. There are two bedrooms, one bath and an open kitchen/living area on the first floor and a larger bedroom and bath on the second floor. Making this an even better find is the one car garage and the fact that it is a corner lot!



Pictures (24)



Lot # 0
County Barnstable
Town Mashpee
Street Description Assoc Maintained, Dead End Street, Paved

Listing Page

Special List Cond. None
SPI/AV 0.00

Advertising

Directions to Property Enter New Seabury, bear left onto Wading Place Rd. Wading Place turns into Shore Road, take a right onto Nick Trail.

General Page

Zoning R3
Year Built 2003*
Year Built Desc. Actual
Total Rooms 4
Total Levels 2
Basement Yes
Basement Description Full, Garage Access, Interior Access

Sq Ft Source Assessors Records
Lot Acres (approx) 0.1500 **Lot Size Source** (Assessors Records)

Approx Square Feet 1763*
Lot Sq Ft (approx) 6534*
Basement Area Sq.Ft. 0
Fin. Bsmnt Area SQFT 0.00
Foundation Concrete
Irregular No
Topography/Lot Desc. Cleared, Gentle Slope
Association Yes
Membership Required Yes
Annual Assoc. Fee \$500
Assoc. Fee Includes Beach, Child Play Area, Community Room
Garage Yes
of Cars #1
of Parking Spaces 0
Garage Description Under
Parking Description Improved Driveway, Off-Street

3/17/2017

Client Portal

Year Round
Separate Living Qtrs

Yes
No

Beds
Waterfront

3*
No

Baths (FH)

2 (2 0)

Water View
Convenient To

No
No

Miles to Beach
Beach Description
Beach Ownership

Golf Course, Marina, Shopping
.3 - .5
Nantucket Sound, Ocean
Deeded Rights

Interior Page

Fireplace
Number of Fireplaces
Floors

Yes
#1
Hardwood, Tile

Exterior

Style
Pool
Dock
Exterior Features
Roof Description
Siding Description

Contemporary
No
No
Deck
Asphalt
Clapboard

Mechanical

Hot Water
Sewer
Heating
Cooling
Fuel Type
Water
Hot Water Source

Tank
Private Sewerage
Forced Hot Air
Central Air
Natural Gas
Town Water
Electric

Legal/Tax

Annual Tax
Tax Year
Land Assessments
Improvement Asmt
Total Assessments
Mass Use Code
Title Reference-Book
Title Reference-Page
Lead Paint
Asbestos
Flood Ins. Required
Elevation Certificate
Flood Zone
Monthly Assoc. Fee
Max Units in Complex
Number of Units
Unit 3 Rooms

\$5817
2017
\$384000
\$256700
\$640700
101-Single Family
203309
CTF
No
Unknown
Yes
Yes
A-Still Water Hit
0
0
0
0

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U.S. Patent 6,910,045

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Model Ordinances

Florida:

Leon County Code of Laws, Section 12-8(b) states:

It shall be unlawful for a seller or landlord of residential property, with knowledge that such property has experienced flooding or is otherwise floodprone, to fail to disclose such facts in writing to a prospective buyer or tenant when such flood conditions are not readily observable and are not known to the prospective buyer or tenant. In addition to the penalties contained herein, the failure of a seller or landlord to provide such disclosure in advance of entering into either a purchase and sale agreement, in the case of a prospective buyer, or an oral or written lease agreement, in the case of a prospective tenant, shall create a rebuttable presumption that the seller or landlord has failed to disclose facts that materially affect the value of such property and shall entitle the purchaser or tenant to seek to recover from the seller, in accordance with the remedies available at law, any damages resulting from such failure to disclose.

California:

Sections 8589.3 and 8589.4 of the Government Code “requires a person acting as an agent for a transferor of real property, or the transferor if he or she is acting without an agent, who has actual knowledge that the property is located within a special flood hazard area or an area of potential flooding to disclose that fact to a prospective transferee.”

This new disclosure requirement applies to every lease or rental agreement for residential property entered into, on or after July 1, 2018.

The landlord or their representative (a property management firm) who offers the property for rent must disclose to the tenant specific information pertaining to the risk of flooding.

This section of the Code states:

“In every lease or rental agreement for residential property entered into on or after July 1, 2018, the owner or person offering the property for rent shall disclose to a tenant, in no smaller than eight-point type, the following:

1. That the property is located in a special flood hazard area or an area of potential flooding, if the owner has actual knowledge of that fact. For purposes of this section, “actual knowledge” includes the following:
 - a. The owner has received written notice from any public agency stating that the property is located in a special flood hazard area or an area of potential flooding.
 - b. The property is located in an area in which the owner’s mortgage holder requires the owner to carry flood insurance.
 - c. The owner currently carries flood insurance.
2. That the tenant may obtain information about hazards, including flood hazards, that may affect the property from the Internet Website of the Office of Emergency Services. The

disclosure shall include the Internet Website address for the My Hazards tool maintained by the office.

3. That the owner's insurance does not cover the loss of the tenant's personal possessions and it is recommended that the tenant consider purchasing renter's insurance and flood insurance to insure his or her possessions from loss due to fire, flood, or other risk of loss.
4. That the owner is not required to provide additional information concerning the flood hazards to the property and that the information provided pursuant to this section is deemed adequate to inform the tenant.

MODEL INTERMUNICIPAL FLOODPLAIN OVERLAY DISTRICT (I-FOD) LOCAL LAW

Article I: Purpose & Intent

1. Flooding is the primary natural hazard in New York State, causing millions of dollars' worth of damage to homes and businesses each year.
2. The National Flood Insurance Program (NFIP) was created in 1968 by Congress to help people financially protect themselves from flooding. The NFIP offers flood insurance to homeowners, renters, and business owners if their community participates in the NFIP and enforces floodplain management regulations.
3. FEMA's Flood Insurance Rate Maps—the primary type of flood maps in the United States—are used to determine flood insurance rates, development regulations, and flood preparation for those at risk. Based on the National Hydrographic Dataset, there are 3.5 million miles of streams in the nation. Currently, only 1.2 million miles have flood maps.
4. Even with thousands of communities participating in the NFIP, flood damages continue to rise. More than 20 percent of flood claims come from properties outside high-risk flood zones.
5. The NFIP sets minimum requirements for new construction in a floodplain, and has no regulations for development outside the mapped floodplain. Communities can adopt higher development standards than the NFIP and prepare maps for land use planning, regulation, and other purposes using a variety of geospatial modeling methods to be used in conjunction with FEMA's Flood Insurance Rate Maps.
6. No Adverse Impact (NAI) floodplain management is an approach developed by the Association of State Floodplain Managers (ASFPM) that ensures the action of any community or property owner—public or private—does not adversely impact the property and rights of others. For local governments, NAI floodplain management represents a more effective way to prevent increases in flood damage to other properties.
7. Intermunicipal cooperation in comprehensive planning and land use regulation is recognized under New York General Municipal Law §119-u. Under §119-u 4., intermunicipal agreements can be used to (e) “create an intermunicipal overlay district for the purpose of protecting, enhancing, or developing community resources that encompass two or more municipalities.”
8. This Local Law outlines a foundation by which a municipality can organize and coordinate with neighboring municipalities to address adverse effects or impacts of land use actions in and around the floodplain and watershed, such as increased flood peaks, increased flood stages, higher flood velocities, increased erosion and sedimentation, or other impacts the community considers important, by coordinating during the planning and development review process.

Disclaimer: This annotated model local law is not a replacement for the Model Local Law for Flood Damage Prevention that contains language that complies with the floodplain management requirements of the National Flood Insurance Program (NFIP) contained in federal regulations 44 CFR 60.3 through 44 CFR 60.6. This model does not constitute a legal document or the provision of legal advice. For this model to be valid and legally enforceable, it must be modified, reviewed, and approved by the local government's legislative body and their respective municipal attorney or other legal counsel.

ARTICLE I ANNOTATIONS

Article I sets forth the purposes and intent of the model local law: to promote NAI floodplain management as a way to promote responsible floodplain development through community-based decision-making. Current national standards for floodplain management and minimal flood mapping are not reducing flood damage. The home rule provision of the New York State Constitution empowers local governments to adopt or amend local laws relating to “property, affairs or government” for the purpose of the public health, safety, welfare, comfort, peace, and prosperity. The regulation of floodplains relates to public safety. Local governments have the authority to decide what floodplain map they will use so long as the final decision is supported by “substantial” evidence. With the NAI approach, local governments identify the potential impacts of development and implement actions to mitigate them before the impacts occur.

Article II: Definitions

Floodplain, 500-year - this is the boundary of the flood that has a 0.2-percent chance of being equaled or exceeded in any given year. This area may be designated as Zone B, C, or X. X Zone relates to newer Flood Insurance Rate Maps, which show B and C Zones as X Zone. The shaded X Zone corresponds to a B Zone and the unshaded X Zone corresponds to a C Zone. It is officially termed the 0.2-percent annual chance floodplain and is outside the SFHA.

Floodplain Storage Compensation - an artificially excavated, hydraulically equivalent volume of floodplain storage sufficient to offset a reduction in floodplain storage resulting from filling or construction within the local regulatory floodplain as determined by the administering agency. Such floodplain storage compensation shall be within the same watershed and shall be provided on the same property or at an alternate site if the administering agency so approves.

Floodprone Area - an area most prone to flooding that is delineated using _____ mapping methods. The floodplain for a localized flood problem may not be mapped as Special Flood Hazard Area on the Flood Insurance Rate Map.

Receiving Municipality - the municipality that provides advisory comments for regulated actions/project referrals.

Sending Municipality - the municipality that submits regulated actions/project referrals for review.

Special Flood Hazard Area - is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the base floodplain or 100-year floodplain.

Stream - general term for a body of flowing water. In hydrology the term is generally applied to the water flowing in a natural channel as distinct from a canal. More generally as in the term stream gaging, it is applied to the water flowing in any channel, natural or artificial. Streams in natural channels may be classified as follows:

1. Perennial. One which flows continuously.
2. Intermittent or seasonal. One which flows only at certain times of the year when it receives water from springs or from some surface source such as melting snow in mountainous areas.
3. Ephemeral. One that flows only in direct response to precipitation, and whose channel is at all times above the water table.

Substantial Damage - damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement - any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions;
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Wetland - an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation, and is regulated by federal, state or local laws.

ARTICLE II ANNOTATIONS

There are several terms and acronyms used throughout this model local law that need to be clarified. Those listed above are summaries of technical terms that are officially defined in the NFIP regulations and are suggested for adoption or modification in a community's floodplain management ordinance.

Article III: Applicability/District Standards

1. Delineation of local floodplain boundaries/Intermunicipal Floodplain Overlay District.

A. Geospatial referenced data.

- i. Fathom's United States Flood Hazard Maps.
Fathom has generated flood hazard maps using a proprietary modeling method. This high-resolution model simulates floods on all rivers across the entire continental United States. It uses a 30m digital elevation model to produce river networks, channel geometry, and land surface. It then uses rainfall data, hydrography data, and satellite imagery to model different frequency flood events. www.fathom.global
- ii. New York Natural Heritage Program's (NHP) Variable Width Riparian Buffers.
Variable width riparian buffers were generated for NHP's Statewide Riparian Opportunity Assessment to support the identification and prioritization of riparian sites for restoration or protection. Riparian zones may include stream banks, floodplain, and wetlands as well as sub-irrigated sites forming a transitional zone between upland and aquatic habitat. These zones provide flood abatement and water quality improvement services. The model uses inputs that represent two primary factors that all riparian ecotones are dependent on: the watercourse and its associated floodplain. The model is an ArcGIS compatible tool that calculates the riparian boundary based on digital elevation data (10-meter), a streams layer (high-resolution National Hydrography Dataset), a wetland layer (National Wetlands Inventory), and an estimate of the 50-year flood height for the HUC12. www.nynhp.org/treesfortribsny
- iii. The Nature Conservancy's (TNC) Eco-Hydrologically Active (EHAs) Areas.
To help prioritize areas for restoration or protection in the Chesapeake Bay Watershed, TNC developed a tool to identify areas that are ecohydrologically active (EHAs), places where groundwater is close enough to the surface that vegetation can interact with it. This interaction can lead to open water, headwater wetlands, floodplains, and riparian buffers—areas that could be providing flood abatement and water quality benefits. The tool identifies these areas based on the geomorphology of the stream corridor and the surrounding landscape. First, it uses a high resolution digital elevation model (LiDAR) to delineate land within 1.5 meters elevation of a stream. It then determines the relative slope of lands within this area. The slope of the land surface across these wetter areas indicates whether an area is likely inundated, driven by surface water input, saturated (but not flooded) and likely driven by groundwater inputs, or incised. www.dnrec.delaware.gov/Admin/DelawareWetlands/Documents/DE%20Wetlands
- iv. Flood Hazard Reports, Army Corps of Engineers
In July 1975, a study was undertaken by the Buffalo District Corps of Engineers at the request of officials from the Town of Greece under the Technical Assistances portion of the Floodplain Management Service Program to estimate the flood potential along streams and along the Lake Ontario shoreline. This study includes a stage-frequency curve for Lake Ontario and discharge-frequency curves for 13 streams in Greece. The profiles and flood maps can assist the community in identifying flood hazard areas and the depths to which flooding can be expected. Similar studies were completed for the Genesee River and Black Creek, at the request of the Towns of Chili and Riga in Monroe County through the New York State Conservation Department, Division of Water

Resources (September 1969); Irondequoit Creek Floodplain within the Towns of Brighton, Penfield, Pittsford, Perinton, and Mendon in Monroe County and the Town of Victor in Ontario County, in response to a request from the New York State Department of Environmental Conservation (February 1975); and Little Black Creek floodplain within the Towns of Chili, Gates, and Ogden in Monroe County, in response to a request from the New York State Department of Environmental Conservation (August 1975).

- B. Locational reference based on geographic information.
- i. New York State Flood Risk Management Guidance (SFRMG).
To meet its obligation to develop guidance for the implementation of CRRRA, the Department of Environmental Conservation (DEC) is developing a new document. The SFRMG is intended to inform state agencies as they develop program-specific guidance to require that applicants demonstrate consideration of sea-level rise, storm surge, and flooding, as permitted by program-authorizing statutes and operating regulations. The SFRMG incorporates possible future conditions, including the greater risks of coastal flooding presented by sea-level rise and enhanced storm surge, and of inland flooding expected to result from increasingly frequent extreme-precipitation events.
 - a. Use the vertical flood elevation and corresponding horizontal floodplain that result for adding two feet (three feet for critical facilities) of freeboard to the BFE and extend this level to its intersection with the ground.
 - b. Use the vertical flood elevation and corresponding horizontal floodplain associated with the 0.2-percent annual chance flood.
 - c. Use the vertical flood elevation and corresponding horizontal floodplain determined by a climate-informed science approach in which adequate, actionable science is available.
 - ii. Stream protection setback.
 - a. U.S. Geological Survey topographical maps will be used to classify impermanent and permanent streams. Impermanent, also known as “seasonal,” streams require a minimum of 25 feet of setback on each side of the stream, extending from the stream bank toward the uplands. Permanent streams are required to have a minimum 50 feet of buffer on each side of the stream, extending from the stream bank toward the upland. *For more information, see Town of Ulysses, NY: Chapter 212. Zoning, Article XX. Design Standards, § 212-124. Standards for vegetated buffer areas.*
- C. Use of other flood data.
- i. Flood information from any other authoritative source, such as historical data, can be used to establish floodprone areas for the purposes of this law. Historical flood information can include:
 - a. high-water marks,
 - b. benchmark/permanent monuments,
 - c. windshield surveys,
 - d. Post-disaster Building Damage Assessments, or
 - e. other inventories of flood-damaged structures.*Up to 25 points are available for communities that participate in the Community Rating System for local laws or ordinances that require disclosure of a property’s exposure to flooding. The objective of Other disclosure requirements (ODR) credit is to provide information to people before they are committed to owning or occupying a piece of*

property that is subject to a flood hazard. ODR credit is based on a legal requirement to disclose the flood hazard on a record or notice that will be seen by potential purchasers or occupants of a property. For example, a local flood hazard disclosure law could require one or more disclosure methods prior to the time of sale or rental of a property.

ARTICLE III ANNOTATIONS

Floodplain management ordinances are enacted by local government as a condition of NFIP participation. The NFIP has clear requirements for such ordinances, but they are minimum requirements that communities are free to enhance or exceed with stricter requirements of their own. Communities are free to undertake their own mapping and to use such techniques as future-conditions mapping to develop a more inclusive overlay district for the purpose. Additionally, the 2016 Uniform Code Supplement allows a community to adopt more restrictive mapping:

2015 International Building Code Section 1612.3. Establishment of flood hazard areas.

To establish flood hazard areas, each community regulated under Title 19, Part 1203 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) shall adopt a flood hazard map and supporting data. The flood hazard map shall include, at a minimum, special flood hazard areas as identified by the Federal Emergency Management Agency in the Flood Insurance Study for the community, as amended or revised with:

1. The accompanying Flood Insurance Rate Map (FIRM),
2. Flood Boundary and Floodway Map (FBFM), and
3. Related supporting data along with any revisions thereto. The adopted flood hazard map and supporting data are hereby adopted by reference and declared to be part of this section.

2015 International Residential Code Section R322.1.4. Establishing the design flood elevation.

The design flood elevation shall be used to define flood hazard areas. At a minimum, the design flood elevation shall be the higher of the following:

1. The base flood elevation at the depth of peak elevation of flooding, including wave height, that has a 1 percent (100-year flood) or greater chance of being equaled or exceeded in any given year; or
2. The elevation of the design flood associated with the area designated on a flood hazard map adopted by the community, or otherwise legally designated.

Select options are listed above for defining local floodplains.

2. Official maps.

Annotations

The legislative authority of a town, village, or city may establish an “official map” or “plan” of the municipality, showing streets, highways, and parks laid out and established by law. In addition, the official map may show drainage systems. The purpose of establishing such a map, according to the enabling statutes, is the conservation and promotion of the public health, safety, and general welfare. More specifically, Sections 277 and 278 of the Town Law, authorizing the planning board to require reservation of suitable land for a park or parks in approving subdivision plats, envision a plan whereby suitable open spaces are to be provided and to become part of the official map to ensure that they are not built upon.

The statutes which delegate to municipalities the power to adopt official maps have been upheld where they did not impose so great a burden upon private land as to take it without due process of law. It has been held that an official map that affects only one-fourth of a plaintiff's property does not effect a taking without due process of the law.

A planning board must review proposed changes in the municipality's official map. For a map to be official, it must be adopted by ordinance or resolution. The ordinance or resolution that establishes a city map must require that an appropriate official or employee of the city execute and file with the clerk or register of the county or counties in which the city is situated, a certificate showing that the city has adopted an official map. The state comptroller has ruled that the filing requirement is mandatory, but has disclaimed authority to determine the effect of failure to file. When a village map is adopted, the village clerk is required to file a certificate of such adoption with the county register or clerk. A similar obligation is imposed upon a town clerk where an official map is adopted by a town. A town has not properly adopted an official map where the town clerk has failed to file with the county clerk a certificate of the map's establishment as required by Section 270 of the Town Law.

With respect to amendments of the map, the legislative body of a municipality which has established an official map has the power to change or add to such map. Changes or additions may be made so as to lay out new streets, highways, parks, or drainage systems, and they may be made as frequently as is deemed necessary for the public interest. A municipal legislature is authorized to change the official map only after notice and hearing. The notice requirements are not the same for all municipalities. A city legislature is required to publish notice of a proposed map change at least once in an official newspaper or one of general circulation, at least five days prior to the hearing. Although, the publication requirement has been omitted in Section 7-724 of the Village Law, the Town Law requires that notice of a hearing on a change in the official map must be published in a newspaper of general circulation at least 10 days prior to hearing, but no posting requirement is imposed. The several enabling statutes require that a proposed change in an official map be referred to the planning board for a report before final action is taken by the legislative authority.

If the planning board does not make its report within 30 days after the referral, the legislative body is free to act upon the change without a report from the board. When a change is finally adopted by the legislative authority of a municipality, it becomes a part of the official map and has the same force and effect. Section 809 of the General Municipal Law requires that every application for a change in the official map “state the name, residence and nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request to the extent known to such applicant.”

An official map may be amended by the proper filing of an approved plat. When a plat has been approved and properly filed, subject to court review, the streets, highways, and parks shown on such plat become a part of the official map of the city, town, or village where the platted land is situated. However, the streets shown on an approved and filed plat remain private streets until they are formally dedicated and accepted by the municipality, or until the municipality has condemned the land for public use as a street. In fact, the enabling acts specifically provide that the owner of the platted land may add, as part of the plat, a notation to the effect that no offer of dedication of streets, highways, or parks shown on the plat is intended.

Article IV: Actions for Referral

1. Regulated Actions

- A. A Floodplain Development Permit Application and Site Development Plan Review Checklist for Floodprone Properties is hereby established for all construction and other development to be undertaken in floodprone areas in this community.

2. Minimum Standards for Intermunicipal Enforcement

- A. Require that all improvements or repairs are counted cumulatively toward the substantial improvement requirement. *This requirement, known as cumulative substantial improvement (CSI), ensures that owners do not evade flood protection measures by making many small improvements that eventually add up to a major or substantial improvement. By adopting the definition of "Repetitive Loss" and modifying the "Substantial Damage" definition, communities can ensure that the total value of all improvements permitted over the years does not exceed 50% of the value of the structure. There are two options for ordinance language that is consistent with the definition of "repetitive loss structure" under the NFIP.*

Option 1: i. Adopt the following definition: "Repetitive loss" means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

ii. And modify the "substantial improvement" definition as follows: "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage," regardless of the actual repair work performed.

Option 2: i. Modify the "substantial damage" definition as follows: "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50% of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

- B. Add a definition for "critical facilities" and require that, to the extent possible, critical facilities be located outside of the SFHA, preferably outside of the 0.2-percent chance floodplain. *This regulatory language addresses the protection of critical facilities that can include, but are not limited to:*
 - i. Structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, and/or water-reactive materials;*
 - ii. Hospitals, nursing homes, and housing likely to contain occupants who may not be sufficiently mobile to avoid death or injury during a flood;*
 - iii. Police stations, fire stations, vehicle and equipment storage facilities, and emergency operations centers that are needed for flood response activities before, during, and after a flood; and*

- iv. *Public and private utility facilities that are vital to maintaining or restoring normal services to flooded areas before, during, and after a flood. A community can prohibit new critical facilities from both the 1-percent chance (e.g., 100-year) and the 0.2-percent chance (e.g., 500-year) floodplains by adding a definition and provisions for enforcement.*
- C. *Maintaining floodplain storage by prohibiting fill or by requiring compensatory storage. Although floodway regulations preserve flood conveyance, they allow the flood fringe to be filled in. The resulting loss of storage can have a significant effect on downstream flood heights, especially in flat areas. Floodplain storage capacity can be preserved in two ways. The first is to simply prohibit fill, the major cause for loss of storage. Prohibiting fill will also prevent most floodplain development and will help preserve the natural and beneficial functions of the floodplain. The other method is to require compensatory storage, e.g., the developer must compensate for each cubic foot of fill, building, or other item that is displacing flood water. Generally, this is done by removing an equal volume of fill from the lot, usually at the same elevation to maintain the same hydraulic conditions.*
- D. *Eliminate “walkout basements” adjacent to streams and wetlands. These are enclosed areas beneath buildings elevated on full-story foundation walls. The floor is at or above grade on at least one side, and is not considered a basement under the NFIP. Flood insurance coverage is typically limited.*

ARTICLE IV ANNOTATIONS

This section has been customized specifically for the Towns of Greece and Parma and Village of Hilton, Monroe County. The three municipalities participated on the Steering Committee for the Model Intermunicipal Floodplain Overlay District Local Law Project as an implementation item of their Flood Smart Action Plan (September 2016). Municipal representatives were asked to vote in a Minimum Standards Survey on what development standards are most important to be enforced across the jurisdictions in managing the upstream-downstream connection of communities. Out of sixteen choices developed from various sources such as CRS Credit for Higher Regulatory Standards, these four standards were most popular.

The other choices offered in the survey are as follows:

- Using a threshold lower than 50% of the building's value to determine when the substantial improvement requirement takes effect.
- Add a definition for "hazardous materials" (consistent with Building Code) and require that, to the extent possible, use, storage, and disposal of hazardous materials be located outside of the SFHA, preferably outside of the 0.2% annual chance floodplain. If located within SFHA, require that hazardous materials be located above the flood protection level or stored/used in a manner that prevents pollution during a base flood (e.g., is resistant to hydrostatic and hydrodynamic loads or is subject to removal based on a flood emergency plan).
- Prohibiting building enclosures below the Base Flood Elevation (BFE). *Communities can discourage subsequent alteration of enclosed areas by entering into nonconversion agreements whereby owners agree not to modify the enclosed area to make it more susceptible to flood damage. Regulatory language can give the community the right to enter the property and inspect the inside of the enclosure periodically through nonconversion agreements.*
- Limit impervious surfaces in new and redevelopment on sites more than 1 acre to ___% to maximize infiltration and reduce runoff.
- Adopt ___foot setback from impermanent and/or permanent streams to allow space for natural floodplains and to maintain existing riparian buffers.
- Require in-basin mitigation of non-jurisdictional wetland impact.
- Require floodway analysis for subdivisions and large developments (those that require determination of BFEs).
- Require road surfaces to be elevated to or above the BFE or allow only a nominal amount of water to flow over the road during the 1% annual chance flood event.
- Adopt V Zone design and construction standards for Coastal A Zones.
- Use the vertical flood elevation and corresponding horizontal floodplain that result for adding two feet (three feet for critical facilities) of freeboard to the BFE and extend this level to its intersection with the ground.
- Use the vertical flood elevation and corresponding horizontal floodplain associated with the 0.2-percent annual chance flood.
- Use the vertical flood elevation and corresponding horizontal floodplain determined by a climate-informed science approach in which adequate, actionable science is available.

Article V: Referral Process

1. Referring Authority. All municipalities participating in the Intermunicipal Floodplain Overlay District are required to submit Regulated Actions as project referrals. The purpose of these referrals is to identify inter-community and watershed-scale impacts of proposed projects and to communicate floodplain management concerns at an early stage of project development.

2. Applications. All project referrals must include a Cover Sheet that should be filled out by the Sending Municipality with the following information:

- A. Name of Sending Municipality;
- B. Name of Applicant;
- C. Name of Project;
- D. Location of Project Site;
- E. Reason for Intermunicipal Review;
- F. List of all Receiving Municipalities
- G. Tax Map Number;
- H. Size of Project/Parcel; and
- I. Type of action being submitted.

A full application must also include a Floodplain Development Permit Application and the Site Development Plan Review Checklist for Floodprone Properties.

3. Authorization. Project referrals are assigned to the Planning Board Chair/Code Enforcement Officer of the Receiving Municipality(s).

4. Time limits. The Receiving Municipality(s) is allowed the following timeframes to review and reply after receipt of a full application:

- A. minimum of thirty (30) days, and
- B. maximum of up to two (2) days prior to a regularly scheduled meeting during which the local board will be taking action (e.g., voting) on the project.

5. Factors for consideration. Review letters from the Receiving Municipality(s) will include advisory comments that are meant to provide helpful insights or suggestions:

- A. Location of floodplain/floodway limits and relationship of proposed project to upstream and downstream properties and drainages,
- B. Potential downstream impact/effects of proposed project,
- C. Flow paths, and
- D. Adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding, and/or erosion.

ARTICLE V ANNOTATIONS

This section references General Municipal Law §239. New York General Municipal Law (GML) requires that certain types of municipal planning, zoning, and subdivision projects be referred to County Planning for review prior to local action being taken. The requirement seeks to promote coordination of land use decision-making and to enhance consideration of potential intermunicipal and county-wide impacts. There are three sections of GML §239 which govern this process: §239-l describes the purpose for county review; §239-m describes planning, zoning and development review referral; and §239-n describes the referral of subdivision applications. Developing intermunicipal review of certain proposed actions promotes NAI floodplain management. NAI floodplain management represents a more effective way to tackle flood problems for local governments and mitigates both current and future adverse impacts on other properties throughout the watershed.

Article VI: Compliance and Liability

1. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered in the local floodplain except in full compliance with the terms and provisions of this Local Law and any other applicable ordinances and regulations that may apply to the Intermunicipal Floodplain Overlay District.
2. The degree of flood protection sought by the provisions of this Local Law is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. This Local Law does not imply that districts outside the Intermunicipal Floodplain Overlay District or land uses permitted within such district will be free from flooding or flood damages.
3. This Local Law shall not create liability on the part of the Municipalities or any officer or employee thereof for any flood damages that result from reliance on this Local Law or any administrative decision lawfully made thereunder.

Article VII: Severability and Effective Date

1. Severability

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Local Law shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Local Law.

2. Effective Date

This Local Law shall be effective upon filing with the Office of the Secretary of State. Approved by:

_____ Date _____

Article VII: Appeals

Variances to the requirements of this Local Law shall be handled by the Board of Zoning Appeals as defined under _____.