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# Floodplain – Shoreland Management Notes

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November 1996

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## A Guide To Flood Zone Determination Companies

It's been one year since the Standard Flood Hazard Determination Form (SFHDF) made its debut for most loan transactions. The early reviews have been positive, but long-term success will be determined by the knowledge and efforts of many different specialists.

Most of the specialists (title search, legal, zoning, register of deeds, etc.) are well known and trusted local experts who have a strong working relationship with the lending institutions. However, the newest and (for flood insurance purposes) most critical specialist is someone the lenders may never have worked with before.

We're talking about the flood zone determination companies. The accuracy of their work must be to the highest professional standards, yet lenders may find it difficult to decide which company has the necessary skills to perform this exacting work. While many of these companies are capable and experienced, the lack of any certification or licensing requirements makes it that much more difficult for a lender to choose wisely.

There are over 100 companies offering determination services. Ask the following questions to ensure that you have picked the best possible flood zone determination provider.

- \* **No law or regulation requires you to use a determination firm.** You can do it yourself. It doesn't cost much to buy the maps and train an employee to do determinations. If it's too close to call, the applicant will have to pay for survey work regardless. Besides, you know more about the local water bodies, topography, street locations, etc. than any out-of-state firm.
- \* **No company is approved, certified or recommended by any government agency.** FEMA

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publishes a list of known companies doing determination work. That is all it is. No government agency has the resources or responsibility to rate or recommend these companies. Some belong to the National Flood Determination Association (NFDA), which requires members to follow a code of ethical practices. A list of members is available from Cheryl Small at (303) 716-5050. Personal recommendations from lenders and other related professionals is another option.

\* **Interview these companies as you would any job applicant.** How long have they been in business? Will they be in business long enough to complete the work and carry out their responsibilities for "life-of-loan" coverage? Are they members of NFDA? If not, why not? How are they capitalized and is it sufficient? What is their track record in your area? Are they familiar with your communities?

\* **What determination procedures are used?** Does the company use a computerized Geographic Information System loaded with floodplain, tax parcel, census tract and plat maps and other sophisticated identifiers? Or is it simply doing a manual comparison of standard paper maps? Find out what you're paying for and make sure you're getting the best determination for the dollar.

\* **Will they provide map name, date, community and panel numbers and risk zone with every determination?**

\* **Will they provide you with a photocopy of the Flood Insurance Rate Map?**

\* **Will they require a plat of survey from you for each determination?** How will they locate the parcel in question on FEMA's very small-scale floodplain maps?

\* **Flood insurance is only required for improved property (or personal property inside a building) located in the Special Flood Hazard Area.** Will the company tell you what risk zone the *building* is in or merely what risk zone the *property* is in? FEMA requires a determination for the building. Make sure you specify that.

The Flood Disaster Protection Act of 1973 charges the lender with the responsibility for making flood hazard determinations. This duty cannot be waived. Regardless of who actually does the work, the lender is ultimately responsible.

The National Flood Insurance Reform Act of 1994 permits lenders to use a third party to make determinations, but only if the third party "guarantees the accuracy" of their work. How is this requirement being met - through bonding, surety, errors and omission insurance? Will it work if you need it? Will you have to sue to obtain it?

All mortgage loans sold on the secondary market must meet these requirements, including loans that are extended, increased or renewed. Home equity loans are covered too. While current regulations do not require lenders to monitor existing loans and place insurance if floodplain maps change,

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good risk management practices would favor such life-of-loan monitoring.

Remember, the risk of fire is less than 1% over the life of the average 30-year mortgage. The risk of flood is 26%.

If you have questions about flood insurance and your responsibilities under the new legislation, please call Tira Miller at the Federal Emergency Management Agency Regional Office in Chicago, at 312-408-5546.

To get a copy of the National Flood Insurance Reform Act of 1994, Public Law 103-325, write to:

United States House of Representatives  
Document Room  
Washington D.C. 20515  
(202) 225-3456  
FAX: (202) 226-4362

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## Legal Issues For Zoning Boards

Zoning Boards hearing requests for variances or after-the-fact permits for illegal structures are often faced with difficult choices in balancing the requirements of the ordinance against the practical problems of bringing a violating structure into conformity. Occasionally, a defendant will raise additional legal challenges to the Board's authority in hopes of deflecting attention from the facts at hand. Several interesting points raised recently are discussed here.

### Doctrine of Laches

This doctrine provides a party with an **equitable defense** where long-neglected rights are sought to be enforced against the party. This was raised in several cases

where a local government was taking enforcement action against shoreline patios and decks that were built without permits within 75 feet of the ordinary high water mark of a navigable body of water.

In essence, this doctrine affirms that an undue **lapse** of time has occurred in enforcing an ordinance and that the regulating body was **negligent** in failing to act more promptly. The time lapse and negligence unfairly injure the rights of the adverse party (the defendant) and thus operate as a bar to the claim or right.

However, laches is generally applied only in court proceedings and is specifically recognized in the Wisconsin Statutes (s. 802.02(3), Wis. Stats.) as an affirmative defense to a claim in a civil court proceeding. **Historically, this doctrine has never been allowed to be used to prevent a municipality from enforcing its zoning ordinances.**

While the case law on the application of laches in Wisconsin is limited, a number of principles have emerged from litigation in other states, including:

- \* the length of time before seeking to enforce a zoning ordinance is generally not a limiting factor;
- \* the defenses of laches and estoppel are judicially disfavored for zoning cases because of the public interest in enforcement of the zoning laws;
- \* knowledge of a zoning infraction does not prevent a municipality from enforcing the ordinance at a later date, no matter when the infraction was discovered;

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\* public policy interests prohibit a private party from asserting the doctrine of laches against a municipality seeking to enforce its zoning ordinance.

For these reasons, the Department would advise local zoning boards to not consider this doctrine when deciding zoning cases.

#### Selective enforcement

As in laches, the courts have consistently rejected this argument. In a 1988 decision, the Wisconsin Supreme Court held that municipal officials were not required to prosecute every violation of a municipal ordinance (Vretenar v. Hebron, 144 Wis. 2d 655). The Court reached its decision after citing earlier cases holding that in general, the duty to prosecute is vested with discretion as to the manner in which it is exercised. Further, it held that there is no obligation on the part of municipal officials to prosecute all cases in which an individual commits a violation of a municipal ordinance code. **Moreover, courts have recognized that selective enforcement of an ordinance is permissible.**

Therefore, allegations of selective enforcement should not sway the Board in applying the variance criteria in determining whether the applicant has demonstrated that his or her application for a variance should be granted.

#### Ignorance of Zoning Restrictions or Contractor Error

It is often asserted that a property owner was unaware of the restrictions that applied to structures within floodplain, shoreland, or wetland areas before building. In some cases, it is claimed that the contractor was ignorant of the restrictions.

Clearly, "ignorance of the law is no excuse" applies to either case. Additionally,

Wisconsin law is clear that property owners are charged with knowledge of the zoning ordinance (Snyder v. Waukesha County Zoning Board, 74 Wis. 2d 468 (1976)) in which the Wisconsin Supreme Court cited its earlier decision in State ex rel. Markdale Corp. v. Board of Appeals, 27 Wis. 2d 154 (1965)). Clearly, such allegations should not be persuasive in the Board's deliberations on variance requests.

When you think about buying a flood policy, do you have these kinds of reactions:

- *Disaster assistance will be available if my home (or business) is flooded. I don't need to buy flood insurance!*
- *It's too expensive!*
- *My home isn't going to be flooded - we've never been flooded before!*

Here are the facts you need to know before you decide.

***Disaster assistance will be available if my home (or business) is flooded. I don't need to buy flood insurance!***

Did you know that, before most forms of Federal disaster assistance are offered, the President must declare a major disaster?

Did you know that the Federal Emergency Management Agency's Individual and Family Grant Program (for personal property) and Temporary Housing Program (for home repair and rental assistance) are available only if the President declares a major disaster and makes that assistance available?

Did you know that more than 90 percent of all disasters are not Presidentially declared?

Did you know that the most typical form of Federal disaster assistance is a loan that must be paid back with interest?

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Did you know that the average Individual and Family Grant payment is less than \$2,500?

Did you know that, to qualify for Home Repair Assistance, your home must have relatively minor damage that can be repaired quickly?

Did you know you cannot qualify for Rental Assistance unless your home has been destroyed or significantly damaged?

***It's too expensive!***

Did you know that the average duration of a Small Business Administration (SBA) disaster home loan is **18.5 years**?

Did you know that the average SBA disaster home loan payment for the average duration is **\$140 a month**?

Did you know that, depending on where you live, you can buy a National Flood Insurance Program (NFIP) flood insurance policy for a \$50,000 home for about **\$135 a year**?

Did you know that the payment for the average duration for a \$50,000 SBA home damage loan is **\$320 a month**?

Did you know that the average premium for an NFIP flood insurance policy is **\$300 a year**?

***My home isn't going to be flooded – we've never been flooded before!***

Did you know that floods are the most common natural disaster?

Did you know that more than 80 percent of all Presidentially declared disasters include flooding?

Did you know what because more and more buildings, roads, and parking lots are being built where forests and meadows used to be,

floods are becoming more severe? Buildings in high hazard areas have a 26 percent chance of being flooded during a 30-year mortgage.

Did you know that more than 25 percent of all claims paid by the NFIP are for policies outside the high hazard area?

***So, what's so great about flood insurance?***

Homeowners, business owners, and renters can all purchase flood insurance, as long as their community participates in the NFIP.

Flood insurance puts you in control: you don't have to wait in lines or qualify for disaster assistance that you may have to pay back with interest.

Flood insurance claims are paid even if a disaster is not declared by the President.

You can buy flood insurance no matter where you live, in high-, low-, or moderate-risk areas, as long as your community participates in the NFIP.

Flood insurance claims are handled quickly so flood victims can recover quickly.

When you file a flood insurance claim, you can get a partial payment immediately, so you can start recovering faster.

Flood insurance reimburses you for all covered losses. Homeowners can get up to **\$185,000** of coverage and businesses up to **\$250,000**.

There is separate contents coverage, so renters can get flood insurance, too.

The average NFIP loss paid from the 1993 Midwest Flood was more than \$25,000.

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Flood insurance claims are paid by policyholder premiums, **not taxpayer dollars**.

Maintaining a flood insurance policy is one of the most important things you can do to protect yourself and reduce the cost of flooding disasters.

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## FEMA Proposes New Mitigation Insurance Coverage

When floods drive people from their homes and businesses, the first instinct is to simply repair and replace what was there. People focus on moving back into their home or reopening their business as soon as possible. That is understandable.

However, simply rebuilding in place, as before, does not solve the problem of recurrent flooding. The "100-year flood" might come again next year. In fact, development pressure has dramatically reduced the flood storage capacity in many watersheds, effectively bumping the "100-year" event to a 75 or 50-year event.

Of course, most people don't consider this when a flood disrupts their lives. Conscientious property owners carry the amount of flood insurance necessary to rebuild their property and replace their possessions. Unfortunately, a standard flood insurance policy only covers the replacement cost of a structure. If federal floodplain regulations require elevation, floodproofing or other flood mitigation measures in order to rebuild, those costs are currently paid by the property owner or through a mitigation grant program, if moneys are available.

To support local efforts to properly floodproof or relocate floodplain structures, the National Flood Insurance Reform Act of 1994 includes a new flood insurance mitigation tool, called "Increased Cost of Construction Coverage" (ICC).

ICC will provide insurance moneys to pay for the costs of complying with federally mandated land use and control measures for floodplain properties. This coverage will pay for such activities as raising a structure's first floor to two feet above the Regional Flood Elevation, floodproofing walls and other structural components, or floodproofing utilities and mechanical equipment.

There are three ways a structure can qualify for this coverage: 1) if flood damages are 50% or more of the structure's equalized assessed value; 2) if it is a repetitive loss structure (where two losses within a 10-year period have caused cumulative damages of 50% or more of equalized assessed value); 3) or if it has sustained repeated flood damage and FEMA determines that it makes sense that the structure comply with local floodplain regulations.

In addition, the community must adopt ordinance language addressing repetitive losses and cumulative substantial damage/improvements. FEMA will be providing model ordinance language for communities to adopt.

This coverage, which will provide up to \$15,000 in mitigation assistance to qualifying properties, will be paid for by a surcharge on all flood insurance policies, not to exceed \$75.00 per year.

It is expected that the final rules will be ready by April, 1997. While the state of Wisconsin supports the concept of ICC, we

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have shared some concerns with FEMA about the current proposal.

- \* The present draft only includes the first two criteria - substantial damage and repetitive loss - for eligibility. The vast majority of insurance claims in Wisconsin fall into the third criteria. We have strongly urged FEMA to develop guidelines to address what are probably the most meaningful criteria to Wisconsin and many other states.
- \* Currently, only mitigating to federal minimum standards is covered. It is important that costs for meeting Wisconsin's higher floodplain development standards be eligible for this coverage. To not do so penalizes communities who have gone beyond the bare minimums to protect their citizens and their property tax base.
- \* It is also unclear whether every policy-holder will pay the full \$75.00 premium or if it will be based on flood zones, flood depths, loss history, etc. We are asking FEMA to clarify how this will be applied.
- \* Finally, we are requesting that ICC be published as an interim final rule, so that adjustments can be made to the \$15,000 cap and other provisions as the program develops a claims payment history. We believe that local officials will be more likely to utilize ICC in their mitigation efforts if they have more input into it.

We will keep you updated on these and other issues as the proposed rule makes its way towards approval. Please contact us if

you have any questions or suggestions about the ICC initiative.

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## Effects Of Government Actions On Land Owners: Views On 'Taking' And 'Giving Of Private Property Value

by Donald Last

**Evidence shows government action sometimes diminishes property value that has led to claims by landowners for compensation. In other circumstances, decisions of the government enhance an owner's land value. These facts have lead one Agricultural Economist to ask a troublesome legal and ethical question: if private losses in value resulting from government regulation should be compensated, then should not private gains in value attributable solely to such regulation be claimed by the government?**

**Introduction.** Location, location, location! Many believe location is the most important variable affecting the value of a land parcel. For instance, the value of most lands located near interstate highways increased when routing decisions were made starting in the 1950's. Similar financial benefits accrued to persons who owned land located along railroads in the 1800's or to those with land bordering ship canals in the 1700's.

But location is not the only influence on land values. Government (national, state, local) is such a key factor in the value of property that it is difficult to conceive of any land parcel that is not affected by its actions, asserts C. Ford Runge, University of Minnesota Agricultural Economist. In an unpublished paper titled *Government Actions Affecting Land and Property*

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*Values: An Empirical Review of Takings and Givings*, Runge says, “government historically has taken actions that raise or lower the value of private property.”

**Government Taking of Land Value.**

Zoning rules set limits on uses of privately owned land. Much has been said concerning the effect of land use regulations on land value. At the base of the argument over the use rights of a private property owner is the taking clause in the U.S. Constitution forbidding the government from taking land or other property of private citizens without adequate compensation. Sometimes a compensation claim arises when a zoning classification adversely affects the usability (and therefore the value) of a property. In limited cases, an application of zoning ordinance or other land use regulation has been ruled to be an unconstitutional taking and compensation has been ordered by the court.

A decision by government officials to rezone a land parcel often changes both its use potential and its value. Some scholars have argued that rezoning decisions do not cause one landowner to benefit at the expense of other landowners (is not a zero sum game). Other experts claim government rezoning actions do have redistributive consequences (land value “windfalls” for owners of rezoned land are offset by land value “wipeouts” for neighbors).

The prevailing view among property rights proponents is that zoning and other land use restrictions hold down land values. In his paper, Runge examined the validity of that viewpoint. He acknowledged that reduced use potential can lower the value of a land parcel. However, he says the opposite effect is possible as reported in a 1992 study in Maryland indicating increases of 50% in the

value of homes subject to land use restrictions that were located on Chesapeake Bay.

**Government Giving of Land Value.** The opposite of a regulatory taking is the “giving” of value as a result of a local land use control decision, Runge observes. Few persons contend it is unconstitutional for local government officials to rezone land if the likely result is a positive effect on its use potential and therefore is a “giving” of value.

Runge says regulatory as well as non-regulatory government actions can increase land value. For example, owners of farmland qualifying for government crop subsidies or public land grazing permit holders are beneficiaries of federal agricultural policy decisions. Runge cites one 1979 study that indicated land values in Kansas were increased \$389 per acre as a result of government subsidies for wheat growers. Also, tobacco allotments in North Carolina raised land value by more than \$14,000 per acre as described in 1960 reports. Runge therefore concludes, “capitalization of agricultural subsidies into land values has been confirmed on a variety of agricultural programs.” Thus, in the case of agriculture, government “givings appear to dominate ‘takings’.” By similar reasoning, federal natural resource policies that provide owners of land containing minerals, oil, or gas with depletion allowances result in “givings” of value to the property owners.

If landowner compensation is the answer to the “taking” of land value, then is no the government entitled to compensation when its actions increase the value of an owner’s land (a “giving”)? Says Runge, “if the gains to rezoning are regarded as a substantial for of ‘givings,’ often accompanied by the

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provision of additional public services and facilities, then an argument exists for taxing the gains from rezoning in order to pay for these services, and perhaps to compensate those whose property values are diminished in the process.” Compensation should be reserved for cases when ALL value of land is taken from an unwilling seller for public use—as in the case of land acquired for a highway project or for school construction, Runge believes.

Runge’s Findings and Conclusions. Runge says: 1. Government action affects land value in positive and negative ways. 2. Compensation payments to landowners for a total taking of the value is warranted. 3. If partial taking of land value by government action is to be compensated, then it also should be fair for government to make a claim for partial giving of value because “compensation for ‘takings’ and taxation of ‘givings’ are two sides of the same coin.” 4. Because it would appear to be impractical to accurately compensate for partial “takings” or to fairly tax for partial “givings,” neither approach is recommended.

Through its laws, society sanctions (private) compensation for a taking but it is not very sympathetic to the idea of (public) compensation in the case of a giving. Despite the increasing number of takings cases involving land use regulations, there is as yet no outcry for an amendment to the U.S. Constitution that might state: “nor shall public interest in private property be given for private use, without just compensation.” Is taking less honorable than giving or is giving any less deserving of legal protection and compensation than is taking? This is a most troublesome question to ask and an even more difficult question to answer.

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## **Flood Relief: Bailing Out Suburban Pioneers - Again**

by Jeffrey Bills

For anyone who still considered Chicago’s suburbs a refuge for people who want a safe predictable life, this summer’s floods must have been a jolt.

At last, the rest of the world could see that, for better or worse, the spirit of the pioneer lives in modern-day settlers who have staked their split-level homesteads in flood plains.

Like their forebears on the frontier, many weatherworn-residents of suburbia refuse to let the threat of nature’s fury stop their westward expansion.

Elsewhere in America, growing segments of the population also subscribe to a brand of latter-day pioneer bravado, building homes in the forests and grasslands of the West and Southwest, which seem to burn every season, or erecting fragile wooden houses on the East Coast, oblivious to the threat of hurricanes.

Chicago’s suburbs have their fair share of people willing to ignore nature.

July’s destructive floods were just the latest in what has become an annual event. Yet most of the people hit hardest didn’t have flood insurance, although for most, it’s available cheap from the federal government.

Some of the homesteaders-turned-victims even lashed out, blaming others for damage

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that in many cases was completely predictable. Many AGAIN said the government should have done something to prevent the flood plains from flooding.

So much for bravado.

There's a social schizophrenia at work here. Americans want the freedom to conquer the frontier, to live where they want, to do what they want with their land. But when a natural disaster reminds them they never can truly conquer the frontier, they ask for a government handout.

It's a case of wanting it both ways. Americans want to live and build without undue restrictions-yet they don't want to take responsibility for the inevitable risks.

It's an expensive contradiction.

Since 1968, the Federal Emergency Management Agency has offered flood insurance to homeowners in communities that participate in the National Flood Insurance Program. Almost all Chicago-area communities participate. Yet according to FEMA, in the 11 northern Illinois counties hardest hit by July's floods, fewer than 10 percent of the people who own homes and businesses had flood insurance.

These homeowners saved themselves the average \$350 annual premium. But now, tens of thousands of them are swamping federal agencies with applications for below-market-rate loans and outright grants and loans.

For example, the Small Business Administration's Office of Disaster Assistance has gotten more than 35,000 applications for loans. So far, about 900 have been approved-totaling more than \$15 million. And more than 27,000 people have

obtained housing grants, with a price tag so far of more than \$62.5 million.

In comparison, federal flood insurance payouts so far to local homeowners hit by the July floods amounted to only about \$5 million. And in the private sector, which does not cover most flood damage, insurance companies have paid \$40 million in claims, according to Michael Erwin, spokesman for the Insurance Information Institute.

Ironically, many of these homeowners who skipped insurance had been flooded before, Erwin said.

"They think it won't happen to them again, and then it does happen," Erwin said.

Their closest soul mates may be the homeowners in earthquake-prone California, of whom only 25 percent purchase earthquake coverage, Erwin said. But coverage for an earthquake or other natural disaster is not as easy to buy as flood insurance. Quake insurance is sold in the private sector, not by the federal government.

Nobody knows exactly how many homes have been built in Chicago-area flood plains, but according to FEMA spokeswoman Linda Sacia, they are "all over the place. That's the problem."

It's the culmination of more than a century of social development according to Bruce Hannon, a geography professor at the University of Illinois at Urbana-Champaign.

In the early 1800's, the federal government gave large swaths of Illinois wetlands to the state, which passed them on to the counties, Hannon said.

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If we had just said, right there, that this is federal wetland preserves, we would probably have solved 95 percent of the problems we're talking about today," he said.

By the 1850s, many of these wetlands had been sold for farmland. It was the beginning of a long, slow process of development that has increased the severity of periodic floods.

"We could have done something differently, but for 120 years, we've gone in the wrong direction," Hannon said.

Undeveloped land can soak up and store a great deal of storm water, Hannon said. Farmland also can store water, he said, but not as much. Developed land stores very little, Hannon said.

Philip Bernstein, planning division chief for the Chicago district of the U.S. Army Corps of Engineers, said studies show flood plains are getting larger in this area. This happens as less land is left open to soak up seasonal rains.

Recently, municipal officials have begun to require developers to include water retention basins and other flood-prevention measures in their plans. But that's not enough to reverse the course of a century of development, Hannon said.

"The only way to protect people from the 100-year flood," Hannon said, "is to clear the 100-year flood plain."

Clearing the flood plain would require some sort of massive government program to identify at-risk homes and purchase them, as they became available, Hannon said. Such a plan, if it could ever be coordinated, could take decades and cost a lot. Clearing the flood plain is a way of asking the

government to fix the problem with taxpayers' money.

Such efforts have been coordinated in some areas along the Mississippi River that flooded in 1993. A noteworthy case was the U.S. government's \$19 million relocation of the village of Valmeyer, Ill.

Few such buyout programs are under way in the Chicago area, according to Sacia of FEMA, but support for them may be growing.

One flood victim, Marlene Anderson of Montgomery, told a village committee that she would like the government to buy her damaged house.

But she did not blame the government alone for her problems: "First, houses should never have been built here. Then, idiots like me shouldn't have bought. We are supposedly in a 100-year flood plain, but with three floods in 24 years, it seems to me the thing to do is say we made a mistake and turn this subdivision into a park."

For the most part, homeowners can do little but brace themselves for the next flood, which could come tomorrow or in a decade. History shows most homeowners still will choose not to buy flood insurance.

Just how many times should other taxpayers be required to foot the bill for these same properties?

Perhaps it's time for this nation of pioneers to begin respecting the frontier.

*Jeffrey Bils is a Tribune reporter who covered the recent flooding in the southwest suburbs.*

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## **When Is A Flood A Flood? And Why Is This Definition Important?**

(Reprinted from Watermark, Federal Emergency Management Agency, Spring/Summer 1995)

### **When is a Flood a Flood Under a Flood Insurance Policy?**

Under a National Flood Insurance Program standard flood insurance policy (SFIP), flooding begins at the moment the insured building is first touched by floodwaters associated with a general condition of flooding in the area. To qualify as a general condition of flooding, the flood must affect two or more adjacent properties, or two or more acres if the water is confined to the lot on which the insured building is located. Also, the occurrence must inundate normally dry land.

The “2-acre rule” is found in Article 3, Section C, Paragraph 2 of the SFIP Dwelling form, General Property form, and the Residential Condominium Building Association Policy.

The purpose of the “2-acre rule” is to establish criteria for flooding confined to a single premise. One acre is 4,840 square yards. Two acres is a little less than two football fields in size (one football field, without the end zones, is 50 yards by 100 yards or 5,000 square yards).

It does not matter if the insured owns both adjacent properties. The policy exclusion refers only to the “premises on which the property is located.” The adjacent properties must be legally distinct properties regardless of ownership.

It is not necessary that buildings on the adjacent premises be inundated or otherwise damaged by flood. It is sufficient that there is inundation of normally dry land on the adjacent premises or street.

It does not matter if the adjacent properties meet the 2-acre rule. There is no stipulation regarding the size of the adjacent properties that would establish a general condition of flooding.

### **Why Is This Definition Critical?**

The above-noted definition of general condition of flooding is critical to those individuals that have purchased a flood insurance policy. It tells them the triggering event for which a sustained loss may be reimbursed under a flood insurance policy.

But one of the biggest misconceptions about the National Flood Insurance Program (NFIP) is that a structure or its contents must be located in a mapped flood zone before the owner or renter can purchase flood insurance. Nothing could be further from the truth. Any property owner or renter can purchase flood insurance provided the structure is located in a community that is participating in the NFIP. Losses may be eligible for payment to an insured when a general condition of flooding occurs in the area regardless of whether or not the structure is in a mapped floodplain.

Historically, the Federal Emergency Management Agency (FEMA) has mapped floodplains adjacent to lakes, streams, wetlands, rivers, and other identifiable bodies of water. The 100-year floodplain for these waterbodies is shown as shaded Zone A on a community’s Flood Insurance Rate Map or Flood Hazard Boundary Map. The shaded Zone A is where a banker must require flood insurance if a federally insured or financed loan, grant, etc. is to be secured.

FEMA has not, nor has it the capability, to map all areas that are subject to a general condition of flooding due to surface water flooding. This task gets more difficult as one moves away from identifiable

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waterbodies into areas traditionally viewed as stormwater management problems (i.e., inadequate storm sewers) and other localized drainage problems.

FEMA has not penalized individuals subject to a general condition of flooding when their property is not in a mapped floodplain. On the contrary, the above-noted definition only says that a “general condition of flooding in the area” must have occurred for the loss to qualify for consideration under a flood insurance policy (subject to an initial waiting period/loss in progress provision, deductibles, etc.).

The NFIP pays 25 percent of its claims nationally in unmapped areas that were subjected to a general condition of flooding. Therefore, local officials should consider encouraging individuals residing in these localized areas or areas of inadequate storm sewers to purchase flood insurance. One of the ironies in some of these unmapped areas is that the general condition of flooding may be repetitive and occur at a greater frequency than the 100-year frequency flood, but the flood insurance premiums are based on a non-floodplain designation rate!!

Communities that are not presently enrolled in the NFIP can do so at any time simply by calling Tina Miller, FEMA State Coordinator, at (312) 408-5546, and requesting an application packet. The application process requires the community to designate a local contact person, to pass a resolution of intent to participate in good faith in the NFIP, and to pass a floodplain management ordinance commensurate with the level of floodplain mapping provided to the community by FEMA.

It seems like nothing is ever as simple as it sounds. And the decision to buy flood insurance is one of these situations. Any

licensed insurance agent or broker that sells property insurance can sell flood insurance for the NFIP.

Owners or renters that are considering whether or not to buy flood insurance should contact their insurance agent for assistance. A knowledgeable agent can help a person get a quote on price, explain the different selections for deductibles and the items that are covered and not covered under a policy, and answer any other questions.

The following article from the Arizona Department of Water Resources’ Flood Management News, entitled “Insurance to Value” provides valuable insight into the amount of flood insurance that may be appropriate to purchase.

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### **Insurance To Value**

Since the flooding in the Midwest, agents have been receiving a greater number of inquiries from flood policy holders who want to know if they are “property insured” in the event of a flood disaster.

Unfortunately, many homeowners are underinsured because they do not purchase enough flood insurance. Many homeowners insure a \$100,000 home with only \$40,000 in flood coverage, reasoning that flood damage will be limited to the first floor of their home. Unless agents are careful to explain it to them, customers don’t realize there is a “depreciation penalty” for underinsuring and that they will only receive actual cash value for their flood losses, which is the cost to repair or replace a home, minus depreciation. Replacement cost, on the other hand, is the amount of money required to replace or repair an insured building in the event of loss or damage, without deduction for depreciation.

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To qualify for replacement cost coverage, a home must be insured for at least 80 percent of its replacement cost value by having their property professionally appraised. The home must also be the policy holder's principal dwelling-the homeowner or his or her spouse must have lived in it for 80 percent of the calendar year immediately preceding the loss, or for 80 percent of the period of ownership of the insured building.

If a home's replacement cost exceeds the maximum coverage limits available through the NFEP, the owners should still be encouraged to buy the maximum amount of insurance available.

Insuring to value safeguards the investment of both homeowners and lenders, protects agent from legal liability for uninsured flood losses, ensures the future financial security of the NFIP, and as a result, saves taxpayers money in the event of a major flood disaster.

Call toll-free 1-800-638-6620 to determine if a community is participating in the NFIP. A county applies to the NFIP for the unincorporated area of the county, and a respective city must apply for its incorporated areas.

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