

Floodplain and Drainage Advisory Committee

March 28, 2012 Meeting Notes

Committee Chair Frank Piorko presided and everyone introduced themselves. Committee members present were: Lew Killmer, Rich Collins, Paul Morrill, Ron Hunsicker, Barry Benton, Sarah Keifer, Fred Mott, Vince D'Anna, Tim Anderson (for Bruce Jones), Mike Riemann, John Garcia, Michele Hagel, Mike Harris, Dave Carlson, and Jeff Bergstrom (new representative from DLLG). Michael Powell, Greg Williams, Brooks Cahall, Bob Enright, Tony Pratt, and Marcia Cagle represented DNREC. David Athey and Gina Tonn represented DNREC's contractor Duffield Associates. Guests included Debbie Absher and Jessica Watson for the Sussex Conservation District, Jared Adkins from the Kent Conservation District, and Mike Fortner from the City of Newark.

Mr. Piorko began the meeting by reviewing the Committee charges and process. He reminded members that the Committee is not creating legislation or binding regulations. Mr. Morrill asked if a community did not adopt standards but was still in compliance with NFIP, would that create a pejorative. Mr. Piorko said he did not think so and Mr. Powell noted that pejorative can be subjective. Mr. Piorko again stated that the Committee's recommended standards would be included in a report sent to local governments who would then send information back. The Committee would review submitted comments and incorporate them into the final report for the General Assembly. No one knows what the General Assembly will do then.

Mr. Collins noted that Senate Bill 64 did not include guidance for General Assembly actions. He believes the Committee is lacking information and no member can know the potential long-term consequences of their actions. Mr. D'Anna said they were still in the early stages of the process and thought the Committee should find closer agreement where they could. He did not want a 12-11 vote.

Summaries of discussions regarding each proposed floodplain standard follow.

Proposed Standard 1: Flood study required in unmapped floodplains.

Mr. D'Anna expressed lack of comfort with the 50 lots / 5 acres component of the standard since topography in Delaware varies and thought the word "adjacency" was problematic. Several Committee members were confused over what would constitute a "Minor Subdivision". Mr. Garcia asked if the studies would be submitted to FEMA and Mr. Powell answered that the standard was not worded that way. Mr. Garcia noted that the subject homes would not be required to purchase insurance and Mr. Powell concurred.

Mr. Collins said the 5 acres part of the standard was not acceptable due to the potential expense of a flood study. Mr. Morrill asked about current regulations and Mr. Powell replied that FEMA does not regulate unmapped floodplains. Mr. Carlson noted there are many unknowns and studies could be costly. He suggested an independent economic impact study. Mr. Anderson asked how many unmapped floodplains had watersheds over 640 acres and was told by Mr. Piorko there were lots.

Mr. Collins said it was easier to assign homes outside of floodplains a “preferred risk” category than to implement new rules. Ms. Harel replied it is better to reduce risk than to insure risk and that communities should be given the opportunity to make their own assessment.

Proposed Standard 2: Use accepted base flood elevations in development documents.

Mr. Powell clarified that if base flood elevation information exists, the standard states to use it but if the information exists but has not been approved by FEMA, do not use it. Mr. Garcia clarified by saying if a property being developed is not in a Zone A or AE, the Record Plan should reflect this information. Mr. Powell agreed and said the intent of the standard is to stop the practice of using unapproved information. Mr. Piorko said it could be reworded.

Mr. Collins asked where unapproved information comes from and Mr. Powell replied from numerous sources and that information not reviewed by FEMA should be reviewed by a county or municipality. Mr. D’Anna asked if there would be one standard for the entire State. Mr. Powell said that different engineers use different methods and Mr. Piorko agreed and stated they did not want to be too prescriptive. Ms. Tonn noted there is usually different data available for different situations.

Mr. Piorko said the language would be clarified. Ms. Harel said FEMA assumes that valid methods are used when a professional engineer or registered architect prepares reports. Mr. Collins said \$1,000 sheds often need building permits and questioned the applicability of the standard in those instances.

Proposed Standard 3: Flood Study required in Zone A (no BFE) FEMA mapped floodplains.

Mr. D’Anna asked if the 50 / 5 rule was arbitrary and was told by Mr. Powell that it was from FEMA. Ms. Harel noted that if FEMA does not accept a study then banks or insurance companies would not accept either and this would affect insurance rates.

Mr. Collins asked about costs and Mr. D’Anna said it varied by size of watershed. Mr. Anderson said a study for a 20 acre parcel in a 7,000 acre watershed on a branch of the Christina River cost \$10,000 to \$15,000. Mr. Powell said mapping of 200 properties in a six mile stretch of Tidbury Creek cost about \$35,000. Mr. Bergstrom thought these costs divided by the number of properties was inconsequential when compared to flood insurance costs.

Mayor Hunsicker said he was previously told the standard was intended to define BFE but not dictate where it applied. Ms. Harel agreed the language is a little unclear. Ms. Tonn said FEMA has guidelines and in some cases the point on the boundary method, for example, was acceptable. Ms. Harel said using historical watermarks is not accurate.

Proposed Standard 4: Only FEMA approved floodplain and BFE data may be shown on site plans.

Mr. Killmer asked if the Corps of Engineers reviewed flood studies in tidal areas and was told by Mr. Powell that this work is done by FEMA. Mayor Hunsicker asked why the standards would apply to tidal areas and Mr. Powell replied that all tidal floodplains in Delaware have been mapped.

Mr. Morrill did not understand how the standard would not apply to minor subdivisions but five lot subdivisions would be included. Discussions ensued about how different jurisdictions defined “minor subdivision” different ways but Mr. Powell said the standard would not apply to a five acre parcel being subdivided into two or three lots.

Mr. Collins asked how this standard differs from Standard #3. Mr. Powell clarified that this standard states that where the information exists, it must be used. Mr. Carlson suggested combining standards #3 and #4 but this would potentially necessitate a waiting time for FEMA reviews. Mr. Powell said standard #3 requires preparation of a study but not its submittal to FEMA whereas standard #4 includes FEMA approval beforehand.

Mr. Killmer suggested changing “may” to “shall” and Mayor Hunsicker suggested adding the phrase “as determined by local governments” after “minor subdivisions”.

Proposed Standard 16: Zone A flood studies must go through FEMA Map Revision process prior to development.

This standard was moved due to its subject matter.

Mr. Collins said this would put control of local land use in the hand of the Federal government. Mr. Riemann said this process is already more or less being done and unless studies went through FEMA, home owners wouldn’t know the status of their homes. Mr. Powell concurred that it would minimize after-the-fact problems. Mr. Bergstrom noted in Newark, home owners are informed of their status prior to moving in.

Mr. Morrill said he thought standard #16 would trump #2. Mr. Powell agreed there was some overlap but said #2 applied to grandfathered lots whereas #16 applied to new subdivisions only.

Mr. D’Anna reiterated his previous comments that DNREC should seek funds to aggressively perform more mapping. Mr. Piorko replied that there is epilogue language in a General Assembly bill that would grant \$550,000 to DNREC for mapping and other efforts

Mr. Collins was not sure what was a better deal, continue with current conditions or pay for studies. Mr. D’Anna countered that “ignorance is bliss” and thought the best thing was to delineate all flood plains.

Proposed Standard 5 / 5a: Require 18 inches / 1 foot of freeboard.

Mr. Killmer noted this standard could result in conflicts with the Americans with Disabilities Act particularly for commercial properties. Mr. Morrill agreed and discussed potential problems with historic districts. He thought floodproofing should be offered as an alternative.

Ms. Harel said she preferred the 18 inch standard as FEMA rounds up to the nearest foot which would be 2 feet. She said this was the requirement in Pennsylvania and other states. Mr. Riemann said this was not as easy as just adding a couple blocks to foundations and could pose problems regarding height restrictions. He also said this standard was a huge issue for the Homebuilders Association which he represents. He asked why FEMA does not have a freeboard requirement to which Ms. Harel said she could not answer.

Mr. Riemann stated that many communities already use a 1 foot standard and questioned why the standard is going above and beyond.

Proposed Standard 6 (formerly mislabeled as 5): Require 18 inches of freeboard for Manufactured Homes.

Mr. D’Anna said he thought there should be a higher standard for manufactured homes in coastal areas due to global warming. Mr. Anderson thought “substantially improved” should be clarified.

Proposed Standard 7: Hydrostatic venting required.

Mr. Powell explained the rationale for this standard as reinforcing NFIP. Mr. Piorko asked what was missing and Mr. Powell responded that NFIP is not properly enforced.

Mayor Hunsicker asked if the word “adjacent” is in NFIP and Mr. Powell said “No” and that it was new. Mr. Morrill and Mr. Killmer both thought adjacency was problematic and asked how property owners would know if they were adjacent.

Proposed Standard 8: Prohibit encroachments which would increase flood heights.

Mr. Powell said this standard goes above and beyond FEMA and that compensatory storage was commonly used to offset fill. Mr. D’Anna noted the standard did not include any process and Mr. Powell responded they did not want to prescribe how an applicant shows compliance. Mr. Anderson said the standard would not apply in New Castle County since activities in floodplains are not allowed. Ms. Keifer noted fill in a floodplain in Kent County is allowed. Ms. Tonn said filling in a floodplain can be done in New Castle County if a floodplain development permit is obtained, which typically involves the Board of Adjustment.

Proposed Standard 9: Prohibit encroachment that would cause more than 0.2 foot of rise.

Mr. Powell said this standard is identical to the previous standard but it adds a measureable height. He noted current criteria allow one foot.

Mr. Collins said it is a policy of the State that sea levels will rise 1.5 feet by 2100 but he thought DelDOT will not be subject to any requirements and will not be raising any roads. He said marginal properties will need to be abandoned but said the slow pace of S.L.R. could be dealt with by small amounts of fill. He believes some may take care of the problem with or without permits. Mr. Piorko clarified that the standard would not apply in tidal areas.

Mr. Anderson said floodways were often already established. Mr. Powell agreed and said designers could get the model runs and evaluate the effect of an activity on the existing model.

Mr. Benton responded to Mr. Collins’ earlier statement and said DelDOT is bound by the same regulations as everyone else. He questioned how an activity such as lining a pipe culvert which improves hydraulics would be affected and how far up or downstream would need to be evaluated.

Mr. Morrill noted New Castle County has a variance process. Mr. D'Anna asked if this standard has any relationship to the pending Sediment and Stormwater Regulations and Mr. Piorko replied "Not really".

Mr. Riemann asked what was wrong with NFIP. Mr. Powell replied that filling is happening and impacting neighboring properties. Because there is no freeboard requirement, flood elevations can go up by a foot, impacting properties elevated to the BFE. People are being impacted with Puncheon Run as an example. He said without freeboard standards, homes were built to the BFE but filling occurred on the other side of the stream which raised water surface elevations. Mr. Cahall said the flat topography downstate results in more drastic impacts. Mr. Collins thinks the market will dictate what happens as lower lands traditionally were lower priced but with the current real estate situation, higher lands are now more reasonable.

Proposed Standard 10: Shallow fill above BFE will not exempt a structure from floodplain regulations.

Mr. Morrill asked about a standard that would combine fill and freeboard.

Proposed Standard 11 (formerly 12): Prohibit subdividing of land in the floodplain.

Mr. Piorko noted similarities between this and standard #12 but said this one was more restrictive. Mr. Killmer expressed concern how this would affect Bethany Beach as he believes there are non-tidal floodplains but Mr. Powell disagreed.

Regarding the 50 lot criteria, Mr. D'Anna asked if that meant all 50 lots had to be in the floodplain for it to be applicable. Mr. Powell said it would be applicable if one or two lots out of a 50 lot subdivision were in the floodplain. Mr. D'Anna questioned that logic.

Proposed Standard 12 (formerly 11): Prohibit new non-water dependent structures in floodplains.

Mr. Collins said this standard was a major assault on property owners for an incredibly small benefit and said more reasons were needed for this government draconian action. Mr. Piorko clarified it would not apply to non-delineated floodplains. Mr. Morrill said it is "buyer beware" in floodplains. Buyers should know they are in a floodplain and builders shouldn't cause adverse impacts on other properties by filling. Information should be shown on plans along with performance standards. Mr. Piorko commented that public funds are often sought to mitigate damages. Mr. Morrill was worried about the upfront preemption aspects of the standard.

Proposed Standard 13: Incorporate FEMA technical bulletins in local floodplain regulations.

Ms. Harel said FEMA did not support this standard as each of the subject documents are "living". She said they were advisory in nature and adherence to them is good but incorporating them into codes is not. Mr. Piorko said the intent is to reference them in codes but not include them and Mr. Powell agreed language would not be cut and pasted.

Mayor Hunsicker said some of the FEMA documents make recommendations and asked how a recommendation could be required. Mr. D'Anna asked about the word "compliance". Ms. Harel said many communities are not aware of the technical bulletins and she supports making them

aware, but noted that they are not legal documents. Mr. Killmer suggested terminology such as “with most current”. Mr. Harris said New Castle County could not adopt a bulletin by reference and instead needed a specific version or date.

Proposed Standard 14: Floodplain information included on permitting documentation.

Mr. Piorko said he had concerns about how this standard would be implemented specifically in instances of small ancillary structures. Otherwise he said he thought this standard should be placed in the “parking lot” for vote at the May 4 meeting.

Ms. Harel said each community does things differently. Mr. Collins said all the discussions to this point have been centered around housing and asked if this standard would apply to minor additions to industrial buildings. Ms. Harel said she believed it would.

Proposed Standard 15: Require use of elevation and flood proofing certificates.

Mr. Collins said this standard would result in expenses on the order of hundreds of dollars and create a new bureaucracy. Mr. Powell said NFIP participating communities already require elevations to be submitted, and this is just about using certain paperwork. Mr. Collins said he wanted to hear from the Sussex County floodplain administrator. Ms. Harel said communities wanting to join the CRS would have to follow standard.

Proposed Standard 17: Prohibit below-grade crawl spaces or enclosures

Mr. Powell said NFIP already prohibits below-grade crawl spaces or enclosures but the wording is circuitous. Mr. Collins agreed.

Mr. Piorko asked if Committee members could stay until 1:00 at the May 4 meeting if DNREC supplied lunch. Most said they could. Mr. Piorko said at that meeting they would go through the proposed floodplain standards briefly and ask if each was supported or not. They would then move on to the drainage standards and repeat the process done this morning. Finally all recommendations would be discussed and consensus sought.

Mr. Killmer asked if a simple majority was enough to pass a standard and Mr. Piorko replied that the record would be recorded and not just yes’s and no’s. Mr. D’Anna asked that the record include minority opinions.

Mr. Riemann asked that NFIP criteria be included in standards when applicable. Mr. Piorko said that statements such as “I support the NFIP instead” would be recorded. He also said a fresh set of standards would be prepared that would include a space for comments. He encouraged everyone to provide feedback. Mr. Carlson reiterated that he thought an economic impact study of standards be prepared.

The meeting was adjourned at 12:00.