

Floodplain and Drainage Advisory Committee

May 4, 2012 Meeting Notes

Committee Chair Frank Piorko presided. Committee members present were: Barry Benton, Jeff Bergstrom, Dave Carlson, Rich Collins, Vince D'Anna, Mike Harris, Ron Hunsicker, Bruce Jones, Sarah Keifer, Lew Killmer, Paul Morrill, Fred Mott, Mike Riemann, Rich Sobota and Lori Harrison (for Gene Read). Michael Powell, Greg Williams, Brooks Cahall, Bob Enright, Tony Pratt, Jim Sullivan, and Meghan Gloyd represented DNREC. David Athey and Gina Tonn represented DNREC's contractor Duffield Associates. Guests included Michelle Harel from FEMA and Jared Adkins from the Kent Conservation District. DNREC Secretary Collin O'Mara attended a portion of the meeting and thanked Committee members for their service.

Mr. Piorko began the meeting by reviewing the Committee process and next steps forward. Mr. Collins asked about the General Assembly's role and if DNREC was going to seek regulatory legislation. Mr. Piorko explained the General Assembly will be the recipient of the final report which will include input from the Committee, Secretary, and municipalities and that DNREC would not be seeking legislation. Mr. Morrill sought clarification if the outcome of the Committee's work would be statewide regulations and was told by Mr. Piorko that local governments would be able to choose which standards to adopt or not adopt. The Committee's job is to inform the Secretary but the General Assembly will have the final word.

Mr. Sobota said proposed changes could not have a negative effect on a community's compliance with FEMA requirements. Mr. Carlson asked how a community that participates in the NFIP but chose not to adopt the standards would be affected. Mr. Piorko said all of the standards are above and beyond FEMA standards and therefore no one would be at risk of noncompliance with NFIP if new standards were not adopted. Mr. Sobota asked if nonvoting members present could participate in the discussions and was told Yes.

The formal presentation began with drainage standards and summaries of discussions regarding each follow.

Proposed Standard 1: Easements.

Mr. Collins noted that cluster development is common in recent years with small lots and more open space. He noted that there are sometimes narrow areas between houses which might impact space for easements. Mr. Piorko replied that some municipalities currently have easements that are too small and that details on easements should get worked out at recordation. Mr. D'Anna asked what the norm is and stated that it is important to make sure that drainage easements remain open. He was told the intent is for easements to be considered during Lines and Grades Plan preparation but the Standard was crafted so local governments could consider how to incorporate within their codes. Mr. Cahall clarified that the issue is more about who is responsible for easements. Mr. Bergstrom noted there are two parties that should be responsible: the governing jurisdiction and home owners (for encroachments). Mr. Killmer again stated an easement needs provisions for downstream conveyance.

Mr. Jones said "adequate width" is too open to interpretation. Mr. Piorko said municipalities may comment on applicability of width and storm events. Mr. Morrill said storm event is addressed in another standard and noted all maintenance is not the same and some activities

require a greater width than others. Mr. Piorko reiterated that assigning responsibility is of more importance.

Mr. Collins said two to three years earlier tax ditch regulations regarding maintenance had changed and large buffer widths ensued. He thought the Standard generally makes sense but is worried that widths could become overly wide or prescriptive in its final form. Mr. Piorko again noted “adequate width” leaves details up to local governments.

Mr. Harris said he had seen many cases where proper easements did not exist and thought this Standard was a great idea. Mr. Morrill suggested adding the phrase “as determined by local governments” after “adequate width”. Committee members concurred but Mr. Powell did not support the language change.

A vote was taken and the Committee unanimously approved the amended Standard.

Proposed Standard 2: Obstructions.

Mr. Jones said “willful” and “negligent” were legal terms and asked why they were included. Mr. Riemann thought they described an order of magnitude of a problem. Mr. Piorko said the intent is not for officers to be called in to enforce violations when there is an inadvertent blockage or silting in of a drainage path. Mr. D’Anna said 99 percent of cases will be willful or negligent with the other one percent being natural sedimentation. Mr. Jones suggested insertion of the phrase “man-made obstruction”.

Mr. Collins asked what the term “conveyance” means and said he thought many problems the Standard is seeking to correct would be historic in nature. Mr. Athey said that definitions would probably be included in the final report. Mr. Collins furthered by stating nearly all of the landscape has been manipulated and people could not be held responsible for prior or past events.

Mr. Piorko said he understood Mr. Collins’ concern but said currently obstructions are handled as a private matter between two individuals in court and the Standard is meant to remedy that. Mr. Powell noted almost all of the standards will have implementation issues and local government input will help determine how and when to apply.

Mr. Jones said he believes attorneys should review the Standard’s language. Mr. Enright quoted from the tax ditch law which includes the terms “willful” and “negligent”.

A vote was taken and the Committee approved the amended Standard with Mr. Jones casting a No vote. Mr. Collins again noted difficulties with the Standard in regards to historical issues.

Proposed Standard 3: Conveyance Systems.

Mr. Cahall noted the inclusion of a reference to a DeIDOT document was to create uniformity. Mr. Piorko asked why and Mr. Cahall said that since DeIDOT does not have jurisdiction statewide the Standard would address private roads and commercial projects. Mr. Benton said it was the Department’s desire to keep additional drainage off its roads.

Mr. D’Anna said whatever standard was used should be in deed restrictions. Mayor Hunsicker noted the costs for compliance for minor subdivisions could be significant and he was not comfortable including them. Mr. Collins said the Standard may not be possible in areas with high water tables and that compliance with DeIDOT regulations was already too expensive. He thought regulatory efforts should seek to get the job done and lower costs.

Mr. D'Anna said as a realtor he objects to situations that result in flooding to which Mr. Collins said people can ignore inconveniences. Mr. Jones said that doesn't happen and people call the State seeking relief.

Mr. Riemann opined that DeIDOT's requirement for design to handle a 25-year storm event in sump conditions was overkill and reminded the Committee this discussion was not about major flooding. He said a blanket reference to the DeIDOT document which is hefty could be going too far and saying "last revised" could result in inclusion of more than is thought. Mr. Cahall said the reference is to a specific section not the entire document.

Mr. Morrill said he supports Mr. Riemann and that a 10-year event is reasonable. Mr. Piorko asked how the Committee would feel if the language was changed to "10-year storm event". Mr. Benton said that would create a conflict with the DeIDOT code but that adding "or" would avoid the conflict. Mr. Riemann said that these are minimum recommendations for municipalities and adding the clarification isn't necessary. Mr. Piorko suggested eliminating the DeIDOT reference altogether and using just the 10-year event which the Committee agreed with. Mr. Collins said the market will not allow development in undesirable land, when better land is available.

A vote was taken and the Committee approved the amended Standard with Mr. Collins and Mayor Hunsicker voting in opposition.

Proposed Standard 4: Lot Grading.

Mr. Killmer said this Standard is common sense but Mr. Collins said he thought it could result in unintended consequences and that ponded water can be good for recharge. Mr. Piorko said DNREC receives 1,200 complaints a year and the Standard is intended to save taxpayers money.

Mr. Riemann said he thought the Standard was a good idea in general but was worried about "to point of defined conveyance". He said that may not be possible or needed on really big lots and suggested deletion of the phrase "to point of defined conveyance" as it is not needed to avoid adverse impact. The Committee generally agreed with the revision.

A vote was taken and the Committee approved the amended Standard with Mr. Collins and Mr. Jones voting in opposition.

Proposed Standard 5: Topographic Plan.

Mr. Killmer thought a definition of "topographic plan" was needed but Mr. Sobota said he thought that may conflict with FEMA's requirement for finished floor elevations in flood hazard areas. Mr. Powell said that this is a minimum standard and may be exceeded or superseded by other requirements. Mr. Sobota said he thought it was not clear and Mr. Powell said it was assumed.

Mr. Benton asked what constituted a topographic plan and Mr. Cahall said it was open to local interpretation. Mr. Riemann agreed that local definitions vary. Mr. Cahall noted problems with minor subdivisions and Mr. Piorko said lots developed over time without a master plan were also a problem.

Mr. Piorko said "topographic plan" is intentionally vague but local governments have a sense of their needs. Mr. Jones said two standards were really being discussed: topography and finished floor elevation. Discussion ensued about what information should be shown on plans and Mr. Piorko reminded the Committee that development of templates was a recommendation. He said

the Standard would help local governments decide what should be required. Mr. Adkins said there is a disconnect between engineers and builders regarding master plans.

A vote was taken and the Committee approved the amended Standard with three members casting No votes (names not recorded).

Proposed Standard 6: As-Builts.

Mr. Mott noted this Standard would take care of the problems Mr. Adkins had stated. Mr. Riemann said he could not support the Standard because often visual observations are enough, local government should have the ability to use judgment, and as-builts on all lots can be expensive. Mayor Hunsicker said as-builts would be a benefit as they create a historic record.

Mr. Morrill asked about typical costs but was told they can vary. Mr. Piorko said the Standard did not include the requirement for a P.L.S. to certify the plan which should keep costs down. Mr. Morrill thought this was overkill and Standard #5 was enough. Mr. Benton said an as-built is often required when financing a home.

Mr. D'Anna said this should be part of the Certificate of Occupancy (C of O) process but Mr. Piorko said few have that in their codes. Mr. Collins said the Standard was not needed for a two acre lot as ponding on other parts of a property is OK. He thought a no adverse impact requirement could render some lots unusable.

A vote was taken and the Committee approved the amended Standard with four members casting No votes (names not recorded).

Drainage Recommendations

Regarding the recommendation for the review of drainage patterns as part of the building permit process, Mr. D'Anna asked how that would be done. Mr. Piorko said the reviewer of a building permit application should also look at the record plan.

A vote was not taken regarding the recommendations but Committee members in general thought they were appropriate.

After a short break, brief discussions were had and votes taken for the floodplain standards. Summaries of discussions regarding each follow. Note some standards were renumbered since the March 28 meeting and two were deleted.

Proposed Standard 1: Flood study required in unmapped floodplains.

A brief discussion between Mr. D'Anna, Mr. Morrill, and Mr. Piorko clarified under what circumstances the Standard would apply.

A vote was taken and the Committee approved the Standard with Ms. Keifer, Mr. Collins, and Mr. Riemann voting in opposition.

Proposed Standard 2: Flood Study Required in Zone A (no BFE) FEMA mapped floodplains.

Mr. Riemann asked how close this Standard is to FEMA regulations and was told it is a clarification to the standard and creates a more rigorous procedure for complying with the FEMA minimum.

A vote was taken and the Committee approved the Standard with Ms. Keifer, Mr. Collins, and Mr. Riemann voting in opposition.

Proposed Standard 3: Only FEMA approved floodplain and BFE data shall be shown on record plans and development documents.

Mr. Harris asked if resubdivision plans would be needed to previously recorded plans when FEMA floodplain lines change. Mr. Powell replied they would not but plans for new houses would need to comply.

A vote was taken and the Committee approved the Standard with Mr. Collins voting in opposition.

Proposed Standard 4: Use accepted base flood elevation in building permit application documents.

Mr. Sobota asked about the connection between FIRM maps and the more precise Flood Insurance Studies (FIS) and was told by Mr. Powell that this Standard does not get into that interpretation. Mr. Riemann asked how this Standard differs from the previous Standard and was told by Mr. Piorko this one address building permits whereas the previous was in regards to recordation documents.

A vote was taken and the Committee unanimously approved the Standard.

Proposed Standard 5: Floodplain information included on permitting documentation.

Mr. Powell stated there was some overlap between this Standard and the previous Standard but that administrative procedures do not always capture the source of floodplain/BFE information shown on plans. Mr. D'Anna asked if the new Corps of Engineers wetland standards could have an effect on this Standard and was told by Mr. Powell that while wetlands and floodplains often are in the same location, there is no connection between the two.

A vote was taken and the Committee unanimously approved the Standard.

Proposed Standard 6: Require use of elevation and flood proofing certificates.

There was no discussion of note.

A vote was taken and the Committee approved the Standard with Mr. Collins voting in opposition.

Proposed Standard 7: Require 18 inches of Freeboard.

Mr. Collins noted a concern about this Standard with regards to height restrictions and that many locations have never had a flooding problem and asked if pressure would be put on those that don't want to adopt the Standard. He was told No. Mr. Powell said the Standard is dealing with new buildings or substantial improvements and that it would not include minor additions. In response to Mr. Collins, Mr. Killmer said if a community did not have floodplains the Standard would not apply to them. Mr. Powell said the Standard may have limited applicability in inland communities with small floodplains and that some communities, like Blades, mostly consist of high ground outside the floodplain. If someone were to build right next to the stream, then the standard would apply. Mr. Collins said it should be up to the town. Mr. Morrill thought that if more people were aware of the impact of freeboard on insurance rates, the market would dictate. He thought it was more important to inform and not require.

A vote was taken and the Committee was evenly split between approval and denial. Those in opposition were Ms. Keifer, Mr. Killmer, Mr. Jones, Mayor Hunsicker, Mr. Benton, Mr. Morrill, Mr. Collins, and Mr. Riemann.

Proposed Standard 7A: Require 12 inches of Freeboard.

There was no discussion of note.

A vote was taken and the Committee was evenly split between approval and denial. Those in opposition were Ms. Keifer, Mr. Killmer, Mr. Jones, Mayor Hunsicker, Mr. Benton, Mr. Morrill, Mr. Collins, and Mr. Riemann.

Proposed Standard 8: Require 18 inches of free board for manufactured homes.

Mr. Collins said he was opposed to this Standard since no one from the manufactured home community was asked to provide input. Mr. Sobota said that due to materials commonly used, a floor being saturated in a manufactured home will typically result in much higher damages as a percentage of the overall value as opposed to in a non-manufactured home.

Mr. Killmer asked if there was a difference regarding manufactured homes on individual parcels or on group lands under single ownership. Mr. Powell said No. Mr. Collins said he contacted a manufactured home park owner who reported he has no problems but Mr. Piorko said his department is working with three or four owners trying to resolve problems.

Mr. Morrill noted that a park owner and home owner would not be insured the same and that the owner of a manufactured home has no responsibility but would be the one incurring damages. Mr. Collins asked if manufactured homes were typically covered by private flood insurance and was told by Mr. Sobota that many companies have gotten out of the business.

A vote was taken and there was a near even split between approval and denial. Mr. Piorko was among those voting in opposition and said he thought there needed to be more discussion with the industry.

Ms. Keifer and Mr. Collins left the meeting.

Proposed Standard 9: Shallow fill above BFE will not exempt a structure from floodplain regulations.

Mr. Sobota asked if there were compaction requirements in Delaware and was told there are but they apply to structural issues only.

A vote was taken and the Committee approved the Standard with Mr. Morrill and Mr. Riemann voting in opposition.

Proposed Standard 10: Hydrostatic Venting required.

Mr. Powell said the Standard should be revised to include the phrase “excluding V zones”. Mr. Sobota asked if it included Coastal A zones. Mr. Powell said Coastal A zones had not yet been included on any floodplain maps in Delaware and DNREC prefers to wait to see how those flood zones look before standards are set for them. Mayor Hunsicker said he thought the Standard did not address the supporting rationale which mentioned lack of enforcement.

A vote was taken and the Committee members present unanimously approved the amended Standard.

Proposed Standard 11: Prohibit below-grade crawl spaces or enclosures.

Mr. Powell said a home with a basement or crawl space with at least one side above finished grade elevation would be less expensive to insure than a home with no sides above. Mayor Hunsicker asked about the effect if a dirt floor was present. Mr. Sobota noted that sometimes fire codes and floodplain management codes conflict. Mayor Hunsicker asked to have the phrase “floor or grade” added which the Committee agreed with.

A vote was taken and the Committee members present unanimously approved the amended Standard.

Proposed Standard 12: Prohibit subdividing of land in the floodplain.

Mr. Piorko explained the difference between open lots and buildable lots. Mr. Powell said if the Standard was not passed it could result in clearing in the floodplain. Mr. Morrill said the clearing issue could also be handled in deed restrictions. Mr. Jones said the goal is to avoid building homes that could get flooded. Mr. Riemann said a size restriction was needed.

A vote was taken and the Committee members present unanimously voted against the Standard. Mr. Piorko said his staff would draft a replacement Standard and reissue for comments.

Proposed Standard 13: Prohibit new non-water dependent structures in floodplains in newly subdivided lands.

Mr. Benton asked how “structures” is defined and Mr. Powell said it is usually done locally. Mr. Morrill thought a fill performance was a better approach. Mr. Powell said the Standard was a default scenario and a community could choose to exempt small buildings.

A vote was taken and the Committee narrowly approved the Standard as six members casted No votes (names not recorded).

Mr. Riemann left the meeting.

Proposed Standard 14: Prohibit encroachments that would cause more than 0.1 foot of rise without compensation.

There was no discussion of note.

A vote was taken and the Committee members present unanimously approved the amended Standard.

Ms. Harrison left the meeting.

Proposed Standard 15: Incorporate FEMA technical bulletins in local floodplain regulations.

Mr. Killmer said if the Standard passed that building officials would need to become familiar with the technical bulletins. Mayor Hunsicker again noted that FEMA language often includes “should” and questioned the implementation of a standard that says “shall”. Ms. Harel said the main purpose is to make sure communities know the bulletins exist.

A vote was taken and the Committee members present unanimously approved the amended Standard.

Mr. Jones left the meeting.

Floodplain Recommendations

Mr. Morrill said many of the recommendations hinge on getting flood studies done by DNREC with costs allocated over time.

A vote was not taken regarding the recommendations but Committee members in general thought they were appropriate.

Mr. Piorko summarized the remaining components of the process. He specifically asked if the Committee wanted to meet again to develop the framework for municipal reviews or if his staff should develop a draft framework for distribution of comments. The Committee unanimously opted for the second option. Mr. Morrill said the document distributed to local governments should reflect the tone of the discussions. Mr. D'Anna reiterated the importance of getting the mapping done. Mr. Carlson asked about the formal recordation of votes and Mr. Piorko said the record will be developed.

The meeting was adjourned at 1:15. Each Committee member handed in their copy of the standards which included not only their official votes but additional comments as well.