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Harold Gilman

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FLOOD PLAIN REGULATION PROGRAM

in NEBRASKA

Questions & Answers



by: **Harold H. Gilman**
Extension Conservationist



EXTENSION SERVICE UNIVERSITY OF NEBRASKA
COLLEGE OF AGRICULTURE AND HOME ECONOMICS
AND U. S. DEPARTMENT OF AGRICULTURE COOPERATING
E. F. FROLIK, DEAN J. L. ADAMS, DIRECTOR

The Law

The 77th Session of the Nebraska Legislature enacted a Flood Plain Management Act. It is listed in the Nebraska Statutes in Sections 2-1506.01 thru 2-1506.14 R.S. Supp. 1967.

"It is an Act relating to flood control; to provide for the regulation of the floodways as prescribed; to define terms; to provide for duties and powers of the Nebraska Soil and Water Conservation Commission as prescribed; to provide for a floodway obstruction removal fund; to declare certain acts unlawful and to provide for penalties."

Introduction

This nation, since its inception, has experienced a phenomenal growth in both population and economy. As a result, flood plains are being developed at a rate faster than flood control measures can be constructed to protect them. Some flood plain areas are presently being developed where control of floods cannot be justified either economically or technically. Therefore, it is necessary to use an alternate or supplemental method of reducing damage to life, health, and property from floods.

A flood plain regulation program is a program whereby local authorities, in cooperation with State and Federal governments, discourage the use of land subject to flooding for business and residential buildings. Zoning and land use regulations which restrict development and permit the passage of flood water decrease severe hardships to persons and property.

Flood plain regulations may be only a part of a complete flood control program. These regulations are used to prevent creation of nuisances which would be a danger to life and property.

It is also an attempt to lower the amount of tax dollars spent annually in fighting floods, flood relief, and the need for more expensive flood control structures.

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Part I

Introduction to Flood Plain Zoning

1. Why have Flood Plain Regulations?

To protect human life and health from the dangers of floods and to minimize flood plain property losses, rural and urban, resulting from unwise and unplanned development in the flood plain.

2. What Are the Objectives of Flood Plain Regulations?

a. To prevent the installation of structures which will limit the channel capacity and increase flood heights, thereby becoming a nuisance and danger to neighboring landowners.

b. To protect unwary land and home buyers against victimization brought about by the purchase of property in a high flood hazard area.

c. To reduce public expenditure for emergency operation, evacuation and restoration.

d. To prevent loss of life, property damage and to protect the public's health.

e. To minimize development which in future years will require expensive protective measures such as reservoirs and levees.

f. To remove the impediment to community growth which a history of flooding creates.

g. To recommend techniques for flood proofing of existing improvements in flood plain areas.

h. To encourage prudent development of flood plain areas to include parks, greenbelts, and such other improvements as land fills and channel rectifications where such improvements and uses are an integral and desirable component for development of the area.

3. To Whom Is This Law Directed?

To political subdivisions of government such as incorporated cities, villages and counties having authority to adopt and enforce land use regulations.

Part II

4. Definitions Used in Flood Plain Regulations

A *watercourse* is any depression two feet or more below the surrounding land serving to give directions to a current of water at least nine months of the year, having a bed and well defined banks.

A *flood plain* is an area adjoining a watercourse or drainageway which *has been* or may hereafter be covered with flood water.

The Commission means the Nebraska Soil and Water Conservation Commission.

A *Commission floodway* means a floodway whose limits have been designated and established by order of the Commission.

A *selected floodway* is the limit where the extent of permitted encroachment would not raise the estimated level of a flood of 100-year frequency in excess of one foot as computed in the water surface profiles.

One hundred year frequency is a flood expected to recur in a particular area once in 100 years on the average, or has a one percent chance of occurring in any one year based on hydrologic computations.

Floodway-encroachment lines are lines limiting a Commission floodway.

A *flood* is the water of any watercourse or drainway which is above the bank or outside the channel banks of the watercourse or drainway.

Part III

Flood Plain Information Reports

5. What Is the Procedure for Initiating the Program as Outlined in This Act?

a. Local political subdivisions such as cities and counties have initial responsibility for the planning, adoption and enforcement of flood plain regulations. It is also their duty to inform their people of flood hazards and their solutions.

b. All flood plain regulations adopted by any political subdivision shall ultimately meet or exceed the minimum standards established by the Commission.

c. Flood plain regulations shall basically provide for flood hazard gradations designated as selected floodways within the 100 year floodway. Land uses are permitted which are not subject to damage by floodwater and will not unduly restrict its passage, creating a nuisance to adjacent life and property.

6. Can Local Government Request a Flood Plain Study?

Yes. Local governments are encouraged to make requests for a flood plain study. The

Commission will assign priorities for implementation upon receipt of the requests received.

7. Is Assistance Available in Formulating Locally Adapted Flood Plain Regulations?

Yes. The Commission will work with local governing bodies in formulating regulations compatible with state law. Also, the Corps of Engineers is available to work in areas that have been studied by that agency.

8. Which Areas Will Be Studied First?

The Commission will prepare and establish a priority list of areas to be studied. The list will be reviewed at least annually.

9. What Will Be Considered in Establishing and Revising the Priority List for Flood Plain Study?

The Commission will consider:

- a. The degree of danger to lives and property from flooding.
- b. Rate and type of development taking place upon the flood plain.
- c. Ability and willingness of the political subdivision having jurisdiction over the area to make use of the data.
- d. Other considerations pertinent to the situation.

10. Who Conducts the Hydrologic Study of the Flood Plain?

The Commission serves as the coordinating agency in implementation of studies. The Corps of Army Engineers, U. S. Geological Survey, qualified consulting engineering firms, the Commission staff or other technical groups may conduct studies as required.

11. Who Pays for the Study?

The cost allocation varies according to the individual technical agency that will be making the study. It depends to a large degree upon the ability and the specific requirements of the local organization requesting the study. The cost sharing system is agreed upon before the study is initiated.

Part IV
Regulation and Enforcement of
Flood Plain Zoning

12. After a Floodway Has Been Delineated by Technical Study – What Is the Next Step?

The Commission:

- a. Shall conduct a public hearing.
- b. Shall establish floodway encroachment lines for the floodway upon which the political subdivision may base its land use regulation.
- c. Shall furnish data to officials of the political subdivision including:
 1. Map outlining the areas involved.
 2. A copy of the Flood Plain Act.
 3. Adopted rules and regulations of the Commission.
 4. Suggested minimum standards.
- d. Shall record all floodway encroachment lines established by it in the office of the registrar of deeds of each county in which such lines are found.

13. When Officials of Local Subdivisions of Government Fail to Act on Recommendations, What Happens?

If within one year from the date of transmittal of the flood plain information to officials of the political subdivision, any political subdivision has failed to adopt land use regulations which meet or exceed the minimum standards of the Commission, the Commission floodway will be enforced and no artificial obstruction shall be located by any person within the floodway encroachment lines without a permit issued by the Commission.

Part V
Permits for Location Alteration
or Construction in Commission Floodways

14. What Is a Permit?

It is a written authorization issued by the governing body for the location, alteration or construction of any artificial obstruction in a Commission floodway. The Commission will require permits only in the event the Commission floodway is being enforced under the terms of the law.

15. Where Do You Obtain a Permit to Locate,

Alter or Construct an Artificial Obstruction in an Enforced Commission Floodway?

Plans for the location, alteration or construction of any artificial obstruction in a Commission floodway must be submitted to the Nebraska Soil and Water Commission, State Capitol, Lincoln, Nebraska.

16. What Information Must Be Submitted in Your Application for a Commission Permit?

Plans submitted for Commission approval shall include maps, plans and legal descriptions locating and describing the proposal and information as to fill limits, elevations and floor elevations.

17. Is a Commission Permit Necessary to Allow Construction of a Floodway?

Yes. Normally a permit will be required and issued by the local political subdivision administering a flood plain regulation program. In the event a Commission floodway is enforced, then permits will be requested from and issued by the Commission.

18. Does an Applicant Have a Recourse if Denied a Permit by the Commission?

Yes. An applicant for a permit which has been denied by the Commission may apply for a formal hearing under Section 4 of the Rules and Regulations of the Commission, and may appeal to a court of competent jurisdiction within 30 days after the Commission's order.

19. What Does a Commission Permit Cost?

The law requires that every application for a permit shall be accompanied by a non-refundable application fee of ten dollars which the State Treasurer shall credit to the Floodway Obstruction Removal Fund.

Part VI

Land Use in Flood Plain Areas

20. What Are Some Permitted Uses in Selected Floodways?

The following uses are permitted if they do not unduly increase flood heights of a 100-year flood by a significant amount (generally considered one foot), and endanger life and property.

a. Agriculture cropland, livestock feeding and grazing (in compliance with public health standards), open-type public and private recreational areas.

b. Fences (wire for agricultural purposes), walls or other appurtenances may be constructed which would not constitute an obstruction or debris-catching obstacle to the passage of floodwaters.

c. Storage yards for equipment and material properly anchored to prevent moving into bridges or other debris-catching areas. The storage of explosive, buoyant or flammable-liquid materials in large quantities *shall not* be permitted.

d. Railroads, streets, bridges and public utility wire and pipelines for transmission and local distribution.

e. Commercial excavation of material from pits, strips or pools providing that no stockpiling of materials, products or over-burden shall create a restriction to the passage of flood flows.

f. Non-restrictive improvements in the stream channel alignment, cross section and capacity in the normal maintenance thereof.

g. Uses of a type not appreciably damaged by floodwater, provided no structures for human habitation shall be permitted.

h. Structures permitted that are designed to have a minimum effect upon the flow of water and are firmly anchored to prevent the structure from flotation.

21. Are There Regulations for Land Outside of the Selected Floodway, but Still Within the Commission Floodway?

Yes. The following regulations are in effect for land outside of the selected floodway:

a. Buildings or structures may be located and existing building or structures may be altered provided the first floors of said building or structures are placed above the elevation of the 100-year flood.

b. Foundations of all structures shall be designed and constructed to withstand flood conditions at the proposed construction site.

c. Basements, lower floors or appurtenances located below the elevation of the 100-year flood shall be designed and constructed to prevent passage of water into the building or structure

and withstand flood conditions, including hydrostatic pressures of elevated watertables and the momentum of flood flows. Materials for construction shall be of the type not deteriorated appreciably by water. Windows, doorways, and other openings into the building or structure that are located below the elevation of the 100-year flood shall be designed and constructed incorporating adequate floodproofing.

d. All electrical equipment, circuits and installed electric appliances shall be located so as not to be subject to flooding or shall be floodproofed to prevent damage resulting from inundation by the 100-year flood.

e. Sanitary and storm sewer drains shall be equipped with valves capable of being closed, manually or automatically, to prevent back-up of sewage and storm waters into the building or structure. Gravity draining of basements may be eliminated by mechanical devices.

f. Chemical storage, explosive, buoyant and flammable liquid storage shall be located above the 100-year flood level or shall be adequately floodproofed to prevent flotation of tanks or other appreciable damage or escape into the floodwaters of toxic materials.

22. What if Dams, Levees or Other Flood Control Structures Are Built Subsequent to Establishment of Commission Floodways?

The encroachment lines would then be altered and the regulations updated to reflect the effects of the structural works of improvements. Flood plain regulations should be continually reviewed based on changing physical conditions and new developments in flood plain regulation practices.

Part VII

Obstructions in Floodways

23. What Is an Obstruction?

An obstruction is any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire fence, rock, gravel, refuse, fill or other analogous structure or matter in, along, across or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris

carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property.

24. What Is a Natural Obstruction?

Natural obstruction is any rock, tree, gravel or analogous natural matter that is an obstruction and has been located within the floodway by a non-human cause.

25. Can an Obstruction Be Built or Remain in an Established Commission Floodway?

An obstruction can be built or may be allowed to remain only, (1) by receiving a *permit* from the Commission, or (2) if located prior to the establishment of Commission floodways.

26. What Is the Obstruction Removal Fund as Authorized by This Act?

The State Treasurer is directed to create and establish the Floodway Obstruction Removal Fund and to credit to such fund for the removal of *natural* obstructions as provided in this Act. Such money shall be specifically appropriated or reappropriated during any biennium of the Legislature. Nebraska Soil and Water Commission may allocate money from the Floodway Obstruction Removal Fund for purposes as provided in the Act subject to the approval of the Executive Board of the Legislative Council.

27. If an Artificial Obstruction Has Been Constructed Prior to the Effective Date of This Act, or the Effective Date of the Minimum Standards as Are To Be Enforced by the Commission, What Is the Status?

The Act shall not affect any artificial obstruction unless located in the floodway after the Commission has established a Commission floodway. No person shall make, nor shall any owner allow, alterations of any artificial obstruction within an established Commission floodway whether such obstruction is located in the floodway before or after the effective date of this act except upon express written approval of the Commission maintenance of an obstruction shall not be construed to be an alteration.

28. Is Repair of Damaged Structures Maintenance or Alteration?

Repair of structures located wholly or

partially in the Commission floodway which have been destroyed or damaged to the extent of 50% of the fair market value shall constitute alterations and not maintenance of such structures.

This provision is intended to preclude the enlargement or continuance of flood obstructing structures. It prevents rebuilding or repair of undesirable or non conforming uses otherwise exempted from the Act.

Part VIII

Violation of this Act

29. Is There a Penalty for Violating the Provisions as Stated in the Nebraska Flood Plain Management Act?

Yes. Any person who violates various sections of this Act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than 100 dollars or be imprisoned in the County jail for more than 10 years, or be both fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.