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**Sent:** Tuesday, September 01, 2020 5:36 PM  
**To:** Planning <[Planning@a2gov.org](mailto:Planning@a2gov.org)>  
**Subject:** Floodplain Management Overlay District

Planning Commissioners:

The current proposed amendment to Chapter 55 of the UDC regarding a Floodplain Overlay Zoning District is insufficient for Ann Arbor as a community which prides itself on being forward thinking with regard to sustainability best practices.

Please heed the best practice for environmental sustainability and safety as recommended by our own Certified Floodplain Manager, Jerry Hancock, who has 30 years of experience in this area and has had leadership roles in state and national associations of Floodplain professionals:

<https://youtu.be/3RiJh66zUX8>

The above link will take you to the webinar held by the City Planning Dept on July 16 to answer questions about the proposed ordinance amendments. At the 50 minute mark of the recording, Brett Lenart asks for clarification about the competing interests of development vs sustainability as pertaining to the Floodplain. Mr. Hancock clearly states:

"As a Floodplain regulator, I wouldn't want to see development happen there (in the Flood Fringe)....I would want to go further as a Floodplain Manager, but there may be other interests there."

Brett Lenart (at the 1:15 mark) states: "There is lots of feedback that we should prohibit development in both the Floodway and Flood Fringe. That would be a perfectly valid policy decision. It would improve the functionality long term."

As proposed, the amendments strengthen the prohibition on new construction in the Floodway, but do little for the flood fringe. It prohibits construction of critical facilities and structures without foundations in the flood fringe, but allows construction that raises the lowest floor or floodproofing requirement from one foot above the 1% annual chance flood elevation to one foot above the .2% annual chance flood elevation.

The webinar and other documents provide a multitude of data that demonstrate the insufficiency of the current proposed amendments. The current FEMA maps and proposed ordinance changes may have been sufficient for 15 years ago, not for today and not for tomorrow, as they do not take into consideration climate change and the altering weather and precipitation patterns.

Please do the right thing for long-term environmental sustainability and safety, and recommend that Council strengthens the proposed ordinance change to prohibit all new construction in the entire Floodplain throughout the City - inclusive of both Floodway and Floodplain.

Thank you.

Linda Berauer

Ward 5

# **Key Concerns and Recommendations for the Proposed Ann Arbor Floodplain Ordinance**

**from Thirty-Five Old West Side Homeowners (listed at end), 10/18/20**

In considering the proposed floodplain ordinance, we participated in the Planning Department's two public sessions, reviewed drafts of the proposed ordinance, checked relevant FEMA and other documents, and considered the ordinance's expected impacts on homeowners. Our most important concerns about the ordinance and recommendations for improving it address the following three issues:

- (1) **Exemption for Historic Structures to the Substantial Improvement/Substantial Damage Provisions;**
- (2) **Proposed Definition of Market Value;** and
- (3) **Proposed Adoption of a 10-year Cumulative Substantial Improvement Standard.**

We also have comments on the process thus far and the need for homeowner education.

We understand the reasons for increased regulation of land use in the City of Ann Arbor's floodplains and are not opposed to an ordinance that seeks to do so. **Our concerns address specific provisions of this ordinance that represent entirely elective policy decisions that go beyond FEMA and state requirements and are unnecessarily injurious to the property rights of owners of existing homes in the floodplain.** As discussed below, the City's overall objectives can easily be attained without imposing overly stringent restrictions and associated costs on existing property owners. **We provide one example of many that is typical of solutions adopted by other NFIP Community Rating System (CRS) cities that achieve a fairer balance between the public benefits and private costs of floodplain regulation.**

## **(1) Exemption for Historic Structures to the Substantial Improvement/Substantial Damage (SI/SD) Process**

City staff have said repeatedly – on the City's website, in the floodplain webinar (7/16/20) and workshop (10/8/20), and in the related presentation materials – that **Historic Structures will be exempt from the SI/SD process, so long as owners do not expand the footprint of the structure or make improvements, repairs, or structural alterations that cause the structure to lose its historic designation.** FEMA authorizes National Flood Insurance Program communities to exempt historic structures in this way. City staff have said that this has been their (uncodified) practice for many years. We are concerned that this stated exemption for historic structures does not match the ordinance's actual language, which only refers generally to Michigan Building Codes (see definition of substantial improvement, page 43 of draft for CPC 10-20-20 meeting). We have repeatedly asked City staff if they wish to qualify their statements about the scope of the exemption in any way or to identify any potential exceptions to the exemption. They have repeatedly declined to do so.

**Those of us who are owners of Historic Structures respectfully request that the Planning Commission verify with City staff during the public hearing and approval process that the general language in the ordinance regarding the exemption of historic structures will be applied as stated by City staff and that homeowners may rely on these assurances without concern that adoption of the ordinance will change enforcement of the SI/SD provisions.**

## **(2) Proposed Definition of Market Value**

**The most consequential regulatory requirement for homeowners under the ordinance and state building codes (where no Historic Structure exemption is applicable) is the potential/eventual**

**need to elevate their structure above the floodplain.** This is extremely costly and, in some cases, may not be technically feasible. This requirement can arise from projects needing permits for Substantial Improvements or from the need to make repairs of Substantial Damages. **If the total cost of renovation or repair work exceeds “50% of the market value (minus land value), compliance is required.**

**The City’s ordinance proposes to define the ‘market value’ of a property in a way that systematically understates the actual fair market value of most Ann Arbor properties.** It would establish the market value as **2 times State Equalized Value** (taxable value) minus **Land Value** (definition on page 37 of draft for CPC 10-20-20 meeting), and then apply the 50% calculation to the cumulative costs associated with all permits submitted **within a 10-year period** (accumulation policy in definition of Substantial Improvement, page 43 of draft for CPC 10-20-20 meeting). (Cumulative costs are discussed further in #3 below). As is explained immediately below, by systematically underestimating fair market value, this definition dramatically increases the probability that owners will have to either elevate or stop making investments in their homes, and may even – if Substantial Damage occurs – force them to abandon and demolish the structures. **Defining “market value” as assessed value has not been codified by FEMA or the Michigan Building Codes and, as explained below, FEMA cautions against using unadjusted assessed value as “market value.”**

**It is vitally important that the City not adopt a definition of ‘market value’ that artificially lowers the fair market value.** Other NFIP Community Rating System (CRS) communities have developed solutions for this issue that assure the efficiency, cost-effectiveness, and equity of the process for homeowners and floodplain managers alike. We have shared below (Appendix A) a representative example of a balanced solution adopted by Sarasota County, FL., which we have seen in many other municipal floodplain ordinances. The approach provides a standard adjustment to taxable value or an option to use fair market value appraisals. No reason has been shared with us to date for why Ann Arbor could not adopt a similar approach, achieving the City’s stated goals and being fairer to homeowners.

The following facts and examples support our position:

- a. **FEMA’s own authoritative guide to floodplain regulation - its Substantial Improvement/Substantial Damage Desk Reference (Page 4-13) - clearly states: “Property appraisals that are prepared by a professional appraiser are the most accurate and reliable method for determining market value.”**
- b. The FEMA guide also notes (Page 4-14): “The use of assessed value has some limitations that, if not considered and accounted for, can produce erroneous estimates of market value.”
- c. The FEMA desk reference further cautions local officials who want to use assessed values for making SI/SD determinations that it is usually necessary to use an adjustment factor because values based on assessment processes are not a direct equivalent for current market value.
- d. In Ann Arbor, many real estate and banking professionals can confirm that a formula based on “2 times SEV” will result in a significant understatement of the true market value of many or even most homes. As an example, the two most recent home sales on our Old West Side street during 2020 closed at 3.0 and 3.9 times SEV. Hundreds of thousands of dollars of true market value would have been excluded from the City’s proposed formula for each home.
- e. Bank regulators require that all mortgage loans be based on appraisals conducted by state licensed appraisers. A tax assessment-based value is not considered accurate enough to ensure the value of the real property which will secure the loan.
- f. City staff has argued that appraisals should not be used in its permitting process because “requiring an appraisal, which costs several thousand dollars, would be a burden on permit applicants and add a great deal of time to the permitting process.” This is not consistent with our actual experience. Most of us homeowners have only had to paid hundreds of dollars (on average, \$350) for our appraisals and have only waited a couple of weeks for them to be completed.
- g. **As illustrated by the example of Sarasota County, FL, cited in Appendix A below, Ann Arbor can offer homeowners two options when they apply for a permit: (1) allow the City**

to use a 'market value' estimate based on an adjusted tax assessment value, or (2) provide a current fair market value (FMV) appraisal conducted by a state-licensed appraiser. Presumably, homeowners will voluntarily choose to incur the expense of an appraisal only if they believe that the tax assessed value significantly understates true fair market value and that relying on assessed value may negatively affect approval of their permit. If desired, the expertise of the City's assessor can be used to evaluate the reasonableness of the independent appraisal (as is done in other municipal floodplain programs).

- h. Having a definition of 'market value' that better reflects the fair market value of a property does not alter points awarded for CRS ratings.
- i. This approach to better reflect fair market value is a reasonable accommodation to protect the property rights of existing floodplain property owners and would ensure that when they face consequential regulatory decisions, these decisions are based on the actual market value of their homes. This is clearly the intent of the National Flood Insurance Program regulations and the reason for all of the FEMA cautions cited above.

### **(3) Adoption of a 10-year Cumulative Substantial Improvement (CSI) Standard**

The new floodplain ordinance as proposed would accumulate and total the costs of all improvements and repairs that require permits over a **10-year period for purposes of triggering the requirement to comply by elevating homes**. After reviewing dozens of local floodplain ordinances - many in cities significantly more exposed to serious flooding than Ann Arbor - most have not adopted any ongoing time period for Substantial Improvement accumulation. A few have adopted 5-year periods. We could only readily identify one city (Austin, TX) that has a 10-year accumulation period, and Austin describes its approach to aggressive floodplain regulation as a response to the fact that it is "one of the most flash-flood prone regions in North America, with flash flooding being the number one natural disaster threat to the entire area." Ann Arbor is not Austin.

The guidance in FEMA's Substantial Improvement/Substantial Damage Desk Reference expresses an understandable concern about preventing homeowners from circumventing floodplain compliance obligations by breaking up a **single project into multiple phases and separate permit applications**. However, over a 10-year period, homeowners may legitimately have separate projects that require permits. A blanket 10-year accumulation period potentially penalizes these homeowners. Rather than having any time period that might penalize homeowners with legitimate separate projects, many NFIP communities simply establish criteria for determining when 'phasing' is occurring and then authorize building departments to aggregate the costs of the separate 'phases' for compliance purposes. Examples of such criteria from the FEMA SI-Desk Reference include: permits for incomplete work that would not allow occupancy without additional work; multiple and/or consecutive permits such as applying for plumbing, electrical, air-conditioning, and building permits at or close to the same time; modification of issued permits; and unauthorized work.

**We understand that City staff would like to see a time-bound accumulation period defined in the ordinance for purposes of simplicity and clarity and in order to obtain additional CRS points for setting higher regulatory standards. We recommend that a 5-year accumulation period be adopted. This would enable the City to gain 40 of the 80 CRS points that the City is seeking for a cumulative Substantial Improvement Standard (out of a possible 13,000 points). This would not unduly constrain homeowners' ability to undertake what are, in fact, separate improvement projects (usually planned) and repair projects (often unplanned) that would often be necessary to maintain a home over the course of a decade. At the City's recent Floodplain Workshop on October 8, we asked City staff whether city building department records over the past 20 years have any evidence to substantiate that Ann Arbor homeowners are phasing projects for periods as long as 10 years in order to circumvent their compliance obligations. No answer to this question was provided, but other information shared in the workshop suggested that the answer is almost certainly 'No.'** **A 5-year accumulation period can always be replaced by a 10-year period at a later date if warranted by evidence that it is needed.**

## Comments on Process and the Need for Homeowner Education

In written answers to questions we submitted in advance of the October 8 Workshop, City staff seemed dismissive of some of our key questions and concerns because we seemed to be calling into question certain 'practices' (previously undisclosed to property owners) that the City says it has long used to enforce the Michigan Building Codes, apparently – as we understand the claim – in all of the City's floodplains, not just in the EGLE-floodplain. This was news to more than a few workshop participants who have been Ann Arbor floodplain homeowners for decades. Other cities have developed property owner educational materials and brochures, available both at their building departments and on line, that clearly explain how they implement the Substantial Improvement/Substantial Damage and other regulations that pertain to floodplain properties. Their standard building permit application forms specify the information requirements and process followed to make permitting decisions for floodplain properties. None of the many homeowners we have talked to has ever seen any of those things in Ann Arbor. Ann Arbor Building Department personnel confirmed to us that they have no specific materials and permit application forms to use for floodplain properties. When a permit application involves a property in the floodplain, they have simply sent permit applications to the Floodplain Manager. What then happens and how decisions are made to enforce the Michigan Building Codes is unclear. Nor has the basis for making crucial decisions about what Market Value means or whether and when permit costs should be aggregated been clear – neither of which is specified in the state building codes. That the City's 'practices' are unknown to most floodplain homeowners should surprise no one.

**Whatever the City's 'practices' have been in the past (written or unwritten, informal or otherwise), we citizens are seeing for the very first time an effort to codify them and write them into law and regulation in Ann Arbor so as to ensure their enforceability.** And the proposed codification goes beyond what FEMA and the Michigan Building Codes require. **Simply because these practices were used internally in the past is not an adequate justification for making them formal regulation. Now is the time for public scrutiny and – yes – for sometimes inconvenient questions to make sure that we strike an appropriate balance between the public benefits and private costs and burdens of increased regulation.** Transparency and public input from those who will be most affected are essential to buy-in and to the long-term success of floodplain regulation in our city.

**We thank the Planning Commission for the opportunity to share these comments.**

## Old West Side Homeowners

Frederick Amrine  
Jeff Alexander  
Christine Brummer  
Marie Coppa  
George Ferrell  
William Graves  
Chris Hammond  
Van Harrison  
Joan Hellman  
Michael Hodges  
Abigail Jacobs  
Amelia C Jayne

Susan Kaufmann  
Paula Lantz  
Ahndia Mansoori  
Denise McCauley  
Jim McCauley  
Boyd McKenna  
Toni Michaels  
Janice Milhem  
Diane Neelands  
Elaine Neelands  
Mitchell Newberry  
Karen Pender

Michael Pender  
Richard Plewa  
Bill Roberts  
Renuka Uthappa  
Ann Verhey-Henke  
Ryan Verhey-Henke  
Jack Wallace  
Carolyn Wallace  
Mark Wishka  
Christopher Zemke  
Glenn Ziegler

## Appendix A: Sarasota County, FL, Local Floodplain Ordinance

Sarasota County is one of many NFIP Community Rating System (CRS) programs that have adopted definitions of Market Value that ensure that property owners will be regulated on the basis of the true market values of their homes. Sarasota County has maintained a Class 5 CRS rating (to which Ann Arbor aspires) since 2007 and is frequently recognized for its implementation of best practices in floodplain management.

In Sarasota County, the term "assessed value of improvement" from the County Appraiser's Office corresponds to "2 times SEV" in City of Ann Arbor tax assessments. In Sarasota County, an automatic adjustment upwards of this amount by 20% is allowed because it is accepted that true market value is at least 20% higher. The same pattern appears to be true in Ann Arbor and would warrant use of an adjustment formula to better approximate fair market values if and when homeowners stipulate their willingness to have the City use that number for permit applications instead of choosing to obtain an independent appraisal.

**We recommend that Ann Arbor adopt an ordinance with provisions similar to those shown below in the Sarasota ordinance so that homeowners can elect to either rely on an adjusted tax assessment-based value for their permit applications or submit an appraisal by a state licensed appraiser.**

### **From Section 54-513. – Definitions – Sarasota County Floodplain Ordinance**

<https://www.scgov.net/Home/ShowDocument?id=2446>

(35) Market Value means the replacement value of a building or Structure, less the value of all forms of depreciation as supported by a well-recognized cost estimator, not to include the vacant land value, Accessory Structures, and Appurtenant Structures such as pools, pool cages, detached garages and any other Structure not structurally attached. For the purpose of determining Market Value the applicant may use the Sarasota County Property Appraiser's Office assessed value of improvement plus 20 percent or an Appraisal Report prepared by a State of Florida Certified Residential Appraiser or State of Florida Certified General Appraiser which meets the requirements of the version of the Uniform Standards of Professional Appraisal Practice ("USPAP") incorporated by reference in Florida Administrative Rule 61J1-9.001. As contemplated by Standards Rule 1-2 of USPAP, the applicant's appraiser shall identify all intended users of the Appraisal Report, including the Floodplain Administrator, and the intended use as ensuring compliance with this Article. The Floodplain Administrator shall perform a review of the following: (1) whether the Appraisal Report accurately reflects the characteristics of the building or Structure (e.g., total square footage and number of rooms compared to tax records, condition of the building or Structure, quality of construction); and (2) whether the replacement value excludes the vacant land value, Accessory Structures, and Appurtenant Structures such as pools, pool cages, detached garages and any other Structure not structurally attached. Further, the Floodplain Administrator shall use whichever Market Value is higher.