

KANSAS

FLOODPLAIN MANAGEMENT TIPS



February 2019

Going to Court

A condition of participation in the National Flood Insurance Program (NFIP) is that communities adopt and enforce a set of floodplain management regulations. Those floodplain management regulations require the Floodplain Manager to issue permits for all development in the floodplain and see to it that the development meets the requirements spelled out in the regulations. Problems arise when a development happens without a permit. Communities are required to enforce their regulations in that situation.

There are steps to the process to inspect the property, send a violation notice, meet with the property owner and find a solution to bring the property in to compliance. Follow all of the steps. Give property owners all of the due process they are entitled to.

In one situation a City Clerk learned a property owner was storing junk in the floodplain. She shut the water off to his house. The property owner immediately came in to find out why the water was shut off. She told him to get rid of his junk and she would turn the water back on. The property owner got rid of the junk. In another case a property owner brought in fill to make a pad to build a garage on top of. The fill was placed in the floodplain without a permit. The Floodplain Manager hopped on his bobcat drove over and loaded up the fill and hauled it away. He used the material to fix some pot holes and erosion areas. These problems got resolved but the property owners were not given due process. These scenarios could have become even bigger problems.

Follow the steps to provide alleged violators with due process. Send them violation notices and schedule meetings with them. Those meetings with violators aren't always a lot of fun. Many will grumble, complain or tell you their hardship story. In spite of any yelling or threats, most property owners will eventually bring their property in to compliance in the end. Gaining compliance is the end goal.

For one reason or another, not all violations are corrected or brought in to compliance. As an example, there have been two cases in Kansas when property owners hired lawyers and paid the lawyer double what the cost of the elevation certificate from a surveyor would have cost them. It follows that floodplain cases may sometimes end up in the courts once lawyers get involved.

Here are some tips about taking legal action to resolve violations.

- Don't let a problem drag out for years and years. Best to deal with a problem sooner than later.
- Most cases do not end up in court but treat every situation as if it might end up in court from the beginning.
- Always keep your City or County Attorney informed and have a working relationship with your legal staff.
- Document all violations thoroughly. Have good record keeping in place.
- Allow for an opportunity to correct violations .
- Send follow up letter if initial letter is not responded to.
- Try following up certified mail with a duplicate letter using an affidavit of mailing.
- Make sure you understand and followed your own regulations.

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State NFIP Coordinator, Steve Samuelson, had jury duty recently. The case began with opening remarks by attorneys for prosecution and defense. The County Attorney read out directly from the police report about the incident in order to make members of the jury aware of what this case would be about as it moved forward. The Police Officer testified later on during the trial. The Police Officer's testimony varied slightly from the police report. The attorney for the defendant made a lot of statements about this inconsistency by the officer. In a post trial conference with the judge, it came out that the officer was normally a very good witness. In this particular situation that officer had been working a double shift and was almost late for court. He had been all night without sleep and had not had time to review the report or his notes before appearing to court.

In the case that a veteran Police Officer, someone who has testified in court before, can make that mistake then Floodplain Managers could certainly stumble in the same way. Community officials should prepare in advance before going to court. It is perfectly acceptable to review your notes before going to court. In fact, you may say that you want to review your notes to refresh your memory when you are giving testimony. Some floodplain violation cases drag on for months before they end up in a court room so your memory may not be complete.

It is a good idea to have a pretrial conference with your attorney. Discuss what you are going to say. Your attorney won't be a floodplain management expert just as most of the people in floodplain management are not legal scholars. Educate your attorney about flood elevations and freeboard while getting tips from your attorney about how to present the problem.

Here are some more tips on giving courtroom testimony.

- Dress appropriately for court. Does your community provide you with a shirt with your job title on it? That kind of uniform lends credit to your professional position on the matter.
- Speak clearly when you testify. Remember that judges may not know what NFIP and other acronyms stand for. Avoid the use of acronyms and jargon.
- Think for a moment before you speak. Don't fall into the trap of answering too quickly.
- Be absolutely honest. Stick to the facts. Better to tell a truth that you don't like than be caught in a lie.
- Don't argue, make jokes or lose your temper. Just give your testimony.
- Ask to have a question repeated if you don't understand it or need time to think.
- Look over to the judge or the jury if there is one. Speak to them as much as to the attorney.

A community official can do everything exactly right. The attorney for the community can do everything right. The floodplain violation can be crystal clear. After all of that, you can still lose in court. In a substantial improvement case that happened after a fire the judge misunderstood the difference between zoning and floodplain management. That judge issued a summary judgment against the community stating the property had been legally zoned before the fire and there was no case. Zoning was never the issue in that situation. This was to have been a case about floodplain management and a substantially damaged property that was rebuilt 3' below the base flood elevation. There was never an opportunity to educate the judge about the difference between zoning and flood zones because the case wasn't allowed to move forward.

It isn't all completely over with when a court case is lost. There are two final options. There is the Federal Emergency Management Agency (FEMA) 1316 List and the Notice on Deed. The 1316 List is a list of properties that are not allowed to buy flood insurance through the NFIP. That enforcement tool often has a delayed effect. The current owner may not have flood insurance or may have insurance from a private company. The 1316 List sometimes harms new buyers who were not involved in the violation to begin with. New buyers find out about 1316 List after they close on a property and try to buy flood insurance. Notice on Deed will be found on the deed by new buyers when the title search is done before the closing on the property. New buyers finding the notice may reconsider purchasing the property and current owners have motivation to correct violations so that the sale will move forward.

Allen County: A Kansas Success Story

The City of Iola, KS is proud to maintain nine public parks, one of which features a disc golf course. However, this space isn't all about fun and games. During a major flood event in 2007, the park area contained several homes that suffered significant damage. The City of Iola used a FEMA (Federal Emergency Management Agency) HMA (Hazard Mitigation Assistance) grant to acquire the homes and convert the area to a park. In October 2018, high water returned to Iola. However, the open parkland contained the flooding and no structures in the community suffered damage.



Above: A disc golf course, which turns into a water hazard during heavy rains, contains flooding within a park (courtesy Gregg Hutton).



Above: Buying out properties to create the park was one way to mitigate flood hazards to the public (courtesy Gregg Hutton).

Another flood mitigation success story is currently under way just outside of Iola in unincorporated Allen County. As part of a recent U.S. Army Corps of Engineers (USACE) and National Weather Service (NWS) Silver Jackets project, Allen County Planning and Zoning Administrator Terry Call requested 176 “Turn Around Don’t Drown®” flood warning signs for low water crossings. While several communities in Kansas requested signs and offered staff time for mounting them, Allen County was far and away the leader in number of signs requested. If you happen to visit Allen County in the near future, keep an eye out for these potentially lifesaving signs. They are expected to be delivered and installed before the spring storm season begins.

A complete display of recurring flood hazard area is available at the KDA-DWR/Kansas Division of Emergency Management/Silver Jackets/National Weather Service Recurring Flood Hazard Area webmap (<http://gis2.kda.ks.gov/gis/floodreport/>). Due to the project’s popularity, signs are no longer available for federal fiscal year 2018. However, communities are encouraged to continue using the webmap to enter data, as knowledge of repetitive flood areas can help improve warnings and forecasts. Additional funding for further sign distribution may be available in the future.

Iola's conversion of floodplain area from residential lots to a park is only one component of a concerted effort in Allen County to create a built environment that supports healthy physical activity. In the last decade, the “Thrive Allen County” public health organization has helped the County construct over 27 miles of new hiking and cycling trails, many of which are located in floodplains. In 2017, Allen County became the first community in the state to win a “Culture of Health” award from the Robert Wood Johnson Foundation. Recreation areas help show how natural floodplain resources provide social and economic benefits in addition to their hydrologic functions.

Communities that are interested in applying for an HMA grant can contact Jake Gray with the Kansas Division of Emergency Management (KDEM) at jacob.s.gray.nfg@mail.mil or (785) 646-1973.



Above: “Turn Around, Don’t Drown®” signs will soon alert Allen County motorists to low water crossings (courtesy USACE/NWS).

Training Opportunities

The Floodplain Management Program will host the following training sessions throughout Kansas. If you are interested in any of the no-cost training opportunities, please contact Martin Koch at 785-296-0854 or Steve Samuelson at 785-296-4622. A training registration form is in this newsletter.

Basics of the National Flood Insurance Program

This class is for officials responsible for administering their local floodplain management ordinance. The focus is on the National Flood Insurance Program (NFIP) and concepts of floodplain management, maps and studies, ordinance administration, and the relationship between floodplain management and flood insurance. Leavenworth and S. Hutchinson courses provide 3.5 hours Continuing Education Credit (CEC) toward the Certified Floodplain Manager (CFM) credential; Garden City course provides 3 hours CEC. Limited to 20 participants.

- Leavenworth - Tuesday, February 26th, 2019 from 8:30 a.m.—12:30 p.m.
- Garden City - Thursday, March 28th, 2019 from 8:00 a.m.—11:30 a.m.
- S. Hutchinson - Tuesday, June 4th, 2019 from 8:30 a.m.—12:30 p.m.

Elevation Certificates & Letters of Map Amendment

This free class is designed for floodplain managers as well as surveyors and engineers who complete Letters Of Map Amendment (LOMA) and Elevation Certificate forms. The course will focus on accurate completion of Federal Emergency Management Agency (FEMA) technical forms, building diagrams and base flood elevation. Approved 3.0 hours toward CFM. Limited to 20 participants. Lunch provided.

- Garden City - Thursday, March 28th, 2019 from 12:00 p.m.—3:30 p.m.

Post-Flood Responsibilities

This free class is intended for community officials responsible for administering floodplain management regulations. The course focuses on what to do during and after a disaster event. Topics include substantial damage, permitting, Increased Cost of Compliance (ICC) and violations. Allowed 3 hours CEC for CFM. Limited to 20 participants.

- Emporia— Thursday, April 18th, 2019 from 8:00 a.m.—11:30 a.m.

Substantial Damage Overview

Come to this course and learn before you have a disaster in your community. A laptop computer with Substantial Damage Estimator (SDE) software is necessary. Topics include NFIP requirements, what constitutes substantial damage, damage estimations, substantial damage estimation software, as well as insurance claims and related insurance questions. Includes classroom lecture and field exercise. Allowed 3.5 hours CEC for CFM. Limited to 20 participants.

- Emporia— Thursday, April 18th, 2019 from 12:30 p.m.—4:00 p.m.

Find more information about floodplain management from Kansas Department of Agriculture
Division of Water Resources online at:

<http://agriculture.ks.gov/divisions-programs/dwr/floodplain>

Email saves money on postage. The electronic newsletter also has links and the photos are in color. If you are getting this newsletter by postal mail and would prefer email please contact Martin Koch at Martin.Koch@ks.gov.

Mark your calendar. The Kansas Association for Floodplain Management 2019 conference will be September 4 and 5 in Lawrence. More information will be posted at the website: www.kafm.org. Registration will be done through a link on the website. If you have questions about registration please contact Jon Bristor, Chairman, at 620-326-2207.

Kansas Department of Agriculture
Division of Water Resources
Floodplain Program
Training Registration Form

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

E-mail _____

Name, date and location of training you will attend _____

*Please share this invitation with anyone else who could benefit from the training.

**Classroom locations will be sent to registered participants one week before the training.

Please mail or fax your registration to:

KANSAS DEPARTMENT OF AGRICULTURE
FLOODPLAIN MANAGEMENT PROGRAM

6531 SE Forbes Ave., Suite B

TOPEKA, KS 66619

Fax to: 785-296-8298

For questions about training, please contact Steve Samuelson by email at steve.samuelson@ks.gov or by phone at 785-296-4622, or contact Martin Koch at martin.koch@ks.gov or by phone at 785-296-0854.

Please help us keep our records current. If the name that appears on this newsletter is for an individual no longer with your organization, please call 785-296-4622, or email steve.samuelson@ks.gov to report the change.

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Kansas Department of Agriculture
Division of Water Resources
Topeka Field Office
Floodplain Management
6531 SE Forbes Ave., Suite B
Topeka, KS 66619

ASFPM 2019 National Conference in Cleveland

The 2019 Association of State Floodplain Managers National Conference will be May 19-24, 2019 in Cleveland, Ohio. This conference is an excellent opportunity for floodplain managers to receive training on mapping technologies, regulations, permitting, outreach and best practices. It is estimated the conference will be attended by more than 1,000 floodplain management professionals. This conference is great chance to meet people for networking and to learn the latest news in floodplain management. Funds may be available to assist with attendance for local officials to the conference. Contact Steve Samuelson for more information: steve.samuelson@ks.gov.

KDA/DWR Water Structures Floodplain Program Staff

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