
Floodplain – Shoreland Management Notes

November 1994

Articles in This Issue	Page
Campers In Floodway Areas Causing Problems	1
Advise On Attached Garages	3
Penny Wise . . . Pound Foolish	4
GAO Eyes Flood, Crop Insurance	4
Wisconsin Flood Video Now Available	5
Ten Commandments Of Floodplain Management	6
NFIP/CRS New Short Form Application	7
National Park Service Providing Mitigation Assistance	8

Campers In Floodway Areas Causing Problems

by Gary Heinrichs

Because of the importance of tourism and recreation to Wisconsin's economy and its citizens, limiting the development of the state's natural resources - for whatever reason - has always been a sensitive topic. Whether the issue is habitat destruction, groundwater pollution, filling in wetlands or risky floodplain development, local and state officials have always treaded a narrow path between private property rights and protection of the public interest.

Most people recognize the inherent dangers in building structures in floodway areas and agree that open space uses of floodways is the safest and most ecologically sound approach to managing them. That is why Wis. Admin. Code, Chapter NR 116

prohibits all new structures designed for human habitation in floodways, structures that have a high flood damage potential, or structures not associated with an open space use. Remodeling or improving existing (nonconforming) structures is also restricted.

What constitutes a structure under Wisconsin law? According to NR 116, a structure "means any man-made object with form, shape and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lake bed." The key word is temporarily. Houses, garages, commercial buildings, etc. are banned from floodway areas. However, structures that are temporarily placed in floodway areas are also banned under NR 116 if they meet any of the three criteria: designed for human habitation, high flood damage potential, or not associated with an open space use.

Mobile recreational vehicles (travel trailers, truck campers, pop-up campers, motor homes, etc.) are considered structures under NR 116, are designed for human habitation and have a high flood damage potential. These structures are banned from floodway areas, whether temporarily or permanently placed there.

The only exception is for campers in department-approved campgrounds that

meet all of the following criteria [NR 116.12 (2)(b)]:

1. The character of the river system and the elevation of all portions of the campground are such that 72 hours warning of an approaching flood can be given to all persons using that campground;
2. An adequate flood warning system is in existence that will provide for adequate advance notice to all persons in the campground and make evacuation mandatory. Such a system shall involve an annual renewable written agreement between the campground owner, the emergency government coordinator, the national weather service and the chief municipal law enforcement official which shall specify a flood elevation at which evacuation shall occur;
3. The campground complies with all applicable local and state laws and regulations, including those of the department of health and social services;
4. The campground shall have signs at all entrances warning of the flood hazard involved;
5. Only mobile recreational vehicles with self-contained holding tanks or easily removable tents or camper units are allowable. No other habitable structures are permitted;
6. Litter collection facilities shall be placed at or floodproofed to the flood protection elevation or be removed during flooding.

Because of the very inclusive prohibitions mandated under NR 116, camping on private lots in floodway areas is never permitted. Commercial and government campgrounds must meet very strict criteria, especially the 72 hour notice requirement which effectively eliminates floodway camping on fast-rising, narrow floodplain streams. The intent of NR 116 is clear: camping in the floodway is a dangerous activity that should be closely monitored and generally prohibited.

The law of the land is quite clear on this prohibition. Enforcement of the law is quite spotty. To assist counties, cities and villages in administering these ordinance provisions, the department will be closely monitoring and providing guidance on the following issues related to floodway development.

No floodplain ordinance can contain a permitting mechanism for camping in floodway areas. This issue came up recently in several counties where owners of private floodway lots were being issued seasonal permits for placement of camping units on the lots. These permits violate several provisions of NR 116, are clearly contrary to the spirit and intent of local and state minimum floodplain management regulations, and any ordinance containing such language cannot be approved by the department and is therefore invalid.

One county based its permit system on the exemption for floodway campgrounds. Clearly, this exemption does not apply to private lots. Another county allowed campers in the floodway through the conditional use permit process. This is an incorrect application of an otherwise lawful process: camping in floodway areas can not be permitted through the conditional use process.

Another county granted permits according to language in section 4.3 (12) of the model floodplain ordinance which states that mobile/manufactured homes and recreational vehicles that remain on site for more than 180 days and are unlicensed or are not ready for highway use must meet the residential floodfringe development standard. The county reasoned that if the permit were issued for a period of less than 180 days, the recreational vehicle would not have to meet any standards. This was an incorrect application of floodfringe development standards to an illegal habitable structure in the floodway.

In fact, it is the department's position that the above referenced section 4.3 (12) - based on a change to language in the federal register - does not even comply with the requirements of NR 116, which allows no exceptions from the residential flood fringe development standards for recreational vehicles. Recreational vehicles in flood fringe areas are required to meet the same standards - one foot of fill, first floor elevated to the flood protection elevation, and dryland access to site - as any other residential development in a flood fringe area.

If the department receives a complaint or identifies a violation of state regulations governing structures in the floodway, the department will take enforcement action. It is the department's expectation that all municipalities will follow the same procedure. Enforcement discretion on floodway violations is against department policy.

The department will appeal illegal permits or variances given for these types of cases. Since human habitation in the floodway is a safety issue, the department will judiciously review any violations brought to its attention

and use the full force of law to satisfy the intent of federal, state and local floodplain management regulations.

Beyond the requirements of NR 116 and local ordinances, municipalities should seriously consider their legal position in allowing dangerous activities such as camping in floodway areas. While permitting illegal habitation of floodway areas is the most egregious example, ignoring or complicitly allowing such activities also exposes a municipality to considerable risk.

While the safety of residents and visitors must be the primary concern for municipalities, avoidance of wrongful death lawsuits and other legal actions must be considered. The death of the young boy during the Baraboo flash flood event in July 1993 could just as easily have taken place in a camper on private property rather than a vehicle on a roadway. The risk is too great to ignore.

Advice On Attached Garages

The department fields a fair number of questions about attached garages. Are they accessory structures? What standards must they meet? Do standards differ between detached and attached garages?

The development standards are less stringent for accessory structures. Wis. Admin. Code Chapter NR 116.13(3) states that accessory structures may be constructed at elevations lower than the flood protection elevation, but not more than two feet below the Regional Flood Elevation or subject to flood velocities greater than two feet per second.

However, that same section expressly states that this only applies to a structure not connected to a principal structure. An attached garage, whether directly connected or connected by a breezeway or some other enclosed structure, is connected. Therefore, attached garages must meet the residential development standards in NR 116.13(2), including fill one foot above the regional flood elevation and extending 15 feet beyond the structure limits, first floor at or above the flood protection elevation, and dryland access to the structure. The only variance that can be granted from these criteria is the 15 feet of fill around the structure, which can be reduced if the size of the lot or other physical barrier creates a problem. These standards also apply to any addition to a nonconforming structure.

Some applicants believe that the Americans with Disabilities Act (ADA) provides relief from these requirements. This is not true. ADA only applies to public accommodations, such as stores, office buildings, restaurants, etc. It does not apply to private homes. If you have further questions about attached garages, accessory structures, or any other matter, please contact your district floodplain specialist.

Penny Wise . . . Pound Foolish

According to the Federal Insurance Administration, you can buy a \$50,000 flood insurance policy through the National Flood Insurance Program for about \$135 a year, depending on where you live. If that home was not insured and was flooded, the payment on a \$50,000 Small Business Administration home damage loan is \$320 a month, or \$3,840 a year. As crazy as it seems, the same people who gladly pay higher premiums for collision insurance for

a \$5,000 car refuse to carry flood insurance for a \$100,000 house in the floodplain. Even though that house has a 26% chance of being inundated by a 100-year flood during the life of a 30-year mortgage. Many homeowners are faced with the threat of severe flooding that usually subsides after a few days. Paying for flood damages may take years if you are not properly insured.

For further information about the National Flood Insurance Program, contact your insurance agent or call 1-800-638-6620.

GAO Eyes Flood, Crop Insurance

(reprinted from the Natural Hazards Observer)

The Midwest floods of 1993 initiated many inquiries into the nation's ways and means of coping with floods. As a result, the U.S. General Accounting Office (GAO) examined certain aspects of both the crop insurance and flood insurance programs.

In Disaster Assistance problems in Administering Agriculture Payments (GAO/T-RCED-94-187, 1994, 8 pp.), testimony presented before the Senate Committee on Agriculture, Nutrition, and Forestry, William E. Gahr, associated director of GAO's Food and Agriculture Issues, Resources, Community, and Economic Development Division, expressed once again the need for the U.S. Department of Agriculture (USDA) to coordinate its administration of disaster assistance and crop insurance payments. Ad hoc disaster payments to agricultural producers have occurred despite congressional efforts in 1980 to make insurance the primary provider of agriculture disaster assistance. However, only about 40% of the eligible acreage is covered by insurance. Total disaster assistance and insurance payments made to each producer may not exceed

legislated limits, but USDA has not consistently required documentation to establish that these limits are not exceeded. Further, although USDA county offices notify disaster payment recipients they are required to purchase crop insurance for the following year, verification of their purchase is not made. A related problem is the difficulty USDA has in obtaining reliable price, production, and loss data to avoid duplicate or excessive payments.

Hundreds of millions of dollars in federal flood insurance payments made after last summer's floods drained the cash reserves of the National Flood Insurance Program (NFIP). In *Flood Insurance: Financial Resources May Not Be Sufficient to Meet Future Expected Losses* (GAO/RCED-94-80, 1994, 33 pp.), GAO reminds the Senate that the NFIP was not intended to be actuarially sound and, indeed, cannot achieve actuarial soundness as long as 41% of its policies are subsidized. It is inevitable that program expenses and claims payments will exceed the funds available in some years.

Increasing the premiums on subsidized policies may not minimize the federal government's overall expenditures, however, because a certain number of owners of structures covered by those policies are expected to cancel them if rates go up. In that event, the federal government would face increased costs for low-interest Small Business Administration (SBA) loans or Federal Emergency Management Agency (FEMA) grants after flood disaster.

On the other hand, expanding participation in the NFIP by enforcing compliance with or expanding coverage of the mandatory purchase requirement will probably increase the number of both subsidized and

unsubsidized policies. Although this will likely reduce the cost of FEMA grants and SBA loans after flood disasters, the resultant increase in subsidized policyholders will put more financial strain on the NFIP because the premiums received from subsidized policies do not cover the losses those properties incur.

GAO cautions that revisions to the NFIP should consider the program's relationship to other federal disaster-related programs.

Single copies of GAO reports are free from the U.S. General Accounting Office, P. O. Box 6015, Gaithersburg, MD 20884-6015, (202) 512-6000; fax: (301) 258-4066.

Wisconsin Flood Video Now Available

"The Floods of 1993 – The Wisconsin Experience," released last December in report form, has now been translated to the silver screen. Featuring 27 dramatic minutes of the most devastating flood to ever plague Wisconsin, the video is packed with highlights of flooding events of that long, wet summer.

The video traces the meteorological factors responsible for the heavy and sustained rainfall common during the flooding period. It provides a basin by basin summary of flooding events and damages. The flooding accounts are interspersed with a number of lessons we learned from the 1993 floods along with a series of recommendations to mitigate flooding severity, property losses, and death and suffering during subsequent flood events.

Although the 1994 flooding events in Wisconsin do not compare to the previous

year, the mid-September dam washouts and extremely high flows in the Northwest district are a strong reminder that sudden, severe flooding is a fact of life in Wisconsin. The torrential flooding in the southeastern United States this summer and the current flooding affecting Texas are grim reminders of the inevitability and destructiveness of floods.

Floods are the most common of all natural disasters, having caused more than 10,000 deaths this century and exceeding \$1 billion in damages per year. Here are some other statistics about the 1993 Midwest floods, provided by FEMA and the NFIP.

- The 1993 floods caused \$17 billion in damages
- More than 62,000 people were evacuated from their homes.
- Fewer than 10% of floodplain residents had flood insurance.
- It was the largest presidential disaster area ever declared.
- The average claim was \$31,496, which is \$23,235 more than the previous 15-year average, and \$19,596 more than FEMA's Individual and Family Grant for disaster assistance.

- Copies of "The Floods of 1993" video are available. To order, please contact Elly Lawry at the following address:

WDNR
P.O. Box 7921
Madison, WI 53707

Ten Commandments Of Floodplain Management

These "Ten Commandments" warrant repeating every now and then. This version is from the "Floodplain Management Newsletter" by the Texas Water Commission.

1. Post your flood insurance rate map and floodway map next to your zoning map. This will serve as a constant reminder that you have a floodplain ordinance in effect.
2. Review all development proposals for possible floodplain management implications.
3. Ensure all residential developments have adequate road access during the 100-year flood. A key goal of floodplain zoning is to ensure that the lives of floodplain dwellers and rescue personnel are not placed in jeopardy.
4. Specify the base flood elevation (BFE) on every building permit that authorizes construction within the floodplain. Either modify existing permit forms or adopt new ones that provide for the entry of the BFE.
5. Review proposed development to assure that all necessary permits have been received from the appropriate federal and state agencies. Require copies of the issued permit or a written statement from the issuing authority indicating that a

permit is not required from the U.S. Army Corps of Engineers, or other federal and state agencies.

6. Ensure that the floodway is unobstructed by fill or structure placement. Periodically check fill projects near watercourses to ensure that the floodway is not being filled and that proper permits are in hand.
7. Do not allow floodproofed basements below the BFE.
8. Require Use Permits for replacement of manufactured homes (i.e. mobile homes) in mobile home parks located in the floodplain and require elevation. Read the wording of your ordinance carefully, if it doesn't clearly allow you to regulate the siting of manufactured homes in flood prone areas, the ordinance needs revision.
9. Be sure to require certification of as-built elevations and floodproofing measures and maintain a record thereof. These records are especially useful down the road when a new owner has to purchase flood insurance.
10. Make sure the permittee is aware of the fact that a certificate of occupancy of zoning compliance must be secured before (s)he can legally occupy the authorized floodplain development. This is your last chance to ensure that compliance with your ordinance has been achieved.

NFIP/CRS New Short Form Application

In the past all CRS applications had to be prepared on worksheets and with formulas detailed in the *CRS Coordinator's manual*. New for 1994 is the *Short Form Application*, a simpler way for a community to apply for an initial CRS classification. The activities are summarized, there are few formulas,

there are no acronyms, and the activity descriptions are combined with checklists instead of application worksheets.

The *CRS Coordinator's Manual* and the *Short Form Application* are similar to the Internal Revenue Service's 1040 and 1040EZ. The *Manual* provides more flexibility but is more complicated. The *Short Form* is easier to prepare, but it offers fewer options and results in fewer total points.

Only the more common and less complicated activities and elements are included in the *Short Form Application*. However, the *Short Form Application* does include all of the activities that are implemented by most communities. The basic rules in the *CRS Coordinator's Manual* still apply and when the ISO/CRS Specialist verifies the community's program, he or she will use the *Manual* to calculate the verified credit points.

Any community may use either approach for its initial application to the CRS. The same amount of documentation is required under both approaches and communities have the same responsibilities to implement the activities, to assist in the verification process, and to re-certify their activities each year.

The *Short Form Application* can only be used for a community's first application; it cannot be used for modifying and application later. An application must use either the *Coordinator's Manual's* application worksheets or the *Short Form Application*; the pages cannot be mixed.

For more information: The *CRS Coordinator's Manual* and the *Short Form Application* can be ordered by calling (317) 848-2898.

National Park Service Providing Mitigation Assistance

Although the floods of 1993 have long since subsided, the damages to property and facilities for recreation still linger in many areas. Lack of funds, technical assistance, planning expertise, and staff time have hindered efforts to restore or improve damaged trails, bridges, dams, natural areas, and historic sites. The importance of tying these structural repairs to well-planned flood mitigation efforts is a priority for the department as well as many local units of government. The cost of these mitigation projects usually precludes 100% state or local funding.

The National Park Service Rivers, Trails, and Conservation Assistance Program provides help to communities in Wisconsin. Through partnership agreements with local organizations, the RTCA can provide planning assistance, public involvement strategies, technical resource analysis, restoration advice, and funding sources. Instead of direct federal control or oversight of a project, RTCA provides resources and facilitates action plans that help local communities achieve their resource protection, recreation, public safety, and transportation goals.

In Wisconsin, RTCA can provide significant benefits to many communities still struggling with the immediate problems of repairing flood damaged areas or the more important long-term policy questions of which areas should be rebuilt, which should be restored to their natural state, and what functions should these restored areas provide. RTCA can provide a variety of services to local agencies.

The first priority of RTCA is to help create systems of greenways, trails, and river

corridors as tools for protecting large landscapes and providing recreation. This meshes perfectly with the renewed state and federal emphasis on relocating flood prone structures out of the floodplain to reduce future damages and eliminating needless government spending on rebuilding flooded buildings in place as before. By funding and promoting beneficial open space uses of floodplains, RTCA will have a major impact on the quality of life for residents of Wisconsin and the quality of recreational opportunities for both residents and visitors to this beautiful state.

There are currently a number of long-term mitigation projects in progress around Wisconsin that would benefit from this program. Many of these communities lack the planning staff and resources to develop and implement a comprehensive plan. By employing the resources of RTCA in cooperation with other federal, state, and local agencies, Wisconsin communities can tailor their land use policies to enhance resource protection, reduce flood damages, expand recreational opportunities, and provide for safe and orderly development well into the next century.

The fiscal year 19956 request for RTCA is \$7.3 million. While a small amount by federal standards, this money will help leverage federal transportation dollars for conservation projects, including the conversion of inhabited floodplains into greenways and trails. At least one-third of federally funded trail projects were planned with assistance from RTCA.

The National Park Service has established a partnership with the Federal Emergency Management Agency's Disaster Assistance program to assist communities in planning long-term responses to their flooding problems. The strategies of "Multi-

Objective Management” underlie this interagency cooperation: the conversion of developed floodplains to areas for recreation, alternative transportation, flood control, storm water management, environmental corridors, and urban buffer zones.

By working in partnership with local communities on these projects, the RTCA is developing healthy, nature-based opportunities for outdoor recreation near

home and work, and is helping local citizens shape the future of their communities, making them more workable and livable. For more information about RTCA, contact Wink Hastings, Projects Director, at the following address:

U.S. Forest Service
301 West Wisconsin Avenue, Room 500
Milwaukee, WI 53202
(414) 297-3617

Bureau of Water Regulation and Zoning
Wisconsin Department of Natural Resources
Box 7921
Madison, Wisconsin 53707-7921

“Floodplain – Shoreland Management Notes” is published by the Wisconsin Department of Natural Resources’ Bureau of Water Regulation and Zoning. Our purpose is to inform local zoning officials and others concerned with state and federal floodplain management and flood insurance issues, shoreland and wetland management, and dam safety issues. Comments or contributions are welcome, call (608) 266-3093.

“This newsletter was supported by funding through FEMA Cooperative Agreement No. EMC-92-K-1290 as part of the Community Assistance Program – State Support Services Element of the National Flood Insurance Program. The contents do not necessarily reflect the views and policies of the federal government.”