

**TITLE XV: LAND USAGE**

Chapter

- 150. UNSAFE BUILDINGS**
- 151. BUILDING REGULATIONS**
- 152. FLOOD HAZARDS**



## CHAPTER 150: UNSAFE BUILDINGS

### Section

- 150.01 Purposes
- 150.02 Definitions
- 150.03 Vacant structures
- 150.04 Enforcement provisions
- 150.05 Modification or rescission of previously issued order
- 150.06 Hearing
- 150.07 Review by court or superior court
- 150.08 Emergency action without order or notice
- 150.09 Order to seal unsafe building performed by contractor
- 150.10 Performance of work under order of enforcement authority; bids; notification; service
- 150.11 Liability for costs of persons holding fee interest or life estate interest; average processing expense
- 150.12 Suit for costs
- 150.13 Establishment of Unsafe Building Fund
- 150.14 Transfer of funds to Unsafe Building Fund
- 150.15 Issuance of inspection warrants
- 150.16 Enforcement through civil action authorized
- 150.17 Injunctions
- 150.18 Civil penalty
- 150.19 Appointment of receiver
- 150.20 Authorization to require performance of order by contract; party defendants; costs and expenses as judgment
- 150.21 Emergencies; court order authorizing action to make premises safe; judgment for costs
- 150.22 Change of venue prohibited; change of judge allowed
- 150.23 Precedence
- 150.24 Notice requirements; service by publication; filing affidavit of service; date of service; circumstances abrogating need for service; implied consent to action
- 150.25 Recording of orders and statements; effect of order; interest in premises under order taken subject to terms of statement of public bids
- 150.26 Transfers of property by persons not complying with orders
- 150.27 Violations

**§ 150.01 PURPOSES.**

The Town Council hereby adopts I.C. 36-7-9-1 through 36-7-9-28 and hereby establishes the Town Code Enforcement Department as the department which shall have the responsibility of administering the Enforcement of Buildings Standards and Removal of Unsafe Building Ordinance adopted by the town, pursuant to and in compliance with I.C. 36-7-9-1 through 36-7-9-28, and further revokes all previous unsafe building ordinances or any ordinances in conflict herewith. Any conflicts with state law shall be resolved in favor of state law or code as amended.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DEPARTMENT.** Refers to the Town Code Enforcement Department or other designation as established by the town.

**ENFORCEMENT AUTHORITY.** Refers to the Building Inspector, Town Code Enforcement Officer, or any others so designated by the town.

**HEARING AUTHORITY.** Refers to the Town Council.

**SUBSTANTIAL PROPERTY INTEREST.** Any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate, a future interest, a present possessory interest, or an equitable interest of a contract purchaser.

**UNSAFE BUILDING.** A building or structure, or any part of a building or structure, that is:

- (1) In an impaired structural condition that makes it unsafe to a person or property;
- (2) A fire hazard;
- (3) A hazard to the public health;
- (4) A public nuisance;
- (5) Dangerous to a person or property because of a violation of a statute or ordinance concerning building condition or maintenance; and/or
- (6) Vacant and not maintained in a manner that would allow human habitation occupancy or use under these requirements of a statute or an ordinance.

**UNSAFE PREMISES.** A tract of real property that does not contain a building or structure, not including land used for production of agriculture, if the tract of real property is:

(1) A fire hazard;

(2) A hazard to the public health;

(3) A public nuisance; or

(4) Dangerous to a person or property because of a violation of a statute or ordinance.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.03 VACANT STRUCTURES.**

(A) In the state, especially in urban areas, there exist a large number of unoccupied structures that are not maintained and that constitute a hazard to public health, safety, and welfare.

(B) Vacant structures often become dilapidated because the structures are not maintained and repaired by the owners or persons in control of the structures.

(C) Vacant structures attract children, become harborage for vermin, serve as temporary abodes for vagrants and criminals, and are likely to be damaged by vandals or set ablaze by arsonists.

(D) Unkept grounds surrounding vacant structures invite dumping of garbage, trash, and other debris.

(E) Many vacant structures are situated on narrow town lots and in close proximity to neighboring structures, thereby increasing the risk of conflagration and spread of insect and rodent infestation.

(F) Vacant, deteriorated structures contribute to blight, cause a decrease in property values, and discourage neighbors from making improvements to properties.

(G) Structures that remain boarded up for an extended period of time also exert a blighting influence and contribute to the decline of the neighborhood.

(H) Vacant structures often continue to deteriorate to the point that demolition of the structure is required, thereby decreasing available housing in a community and further contributing to the decline of the neighborhood.

(I) The blighting influence of vacant, deteriorated structures adversely affects the tax revenues of local government.

(J) The State General Assembly finds that vacant, deteriorated structures create a serious and substantial problem in urban areas and are public nuisances.

(K) In recognition of the problems created in a community by vacant structures, the State General Assembly finds that vigorous and disciplined action should be taken to ensure the proper maintenance and repair of vacant structures and encourages local governmental bodies to adopt maintenance and repair standards appropriate for the community in accordance with this chapter and other statutes. (Ord. 2007-03, passed 6-5-2007)

#### **§ 150.04 ENFORCEMENT PROVISIONS.**

(A) (1) The enforcement authority may issue an order requiring action relative to any unsafe premises, including:

- (a) Vacating of an unsafe building;
- (b) Sealing an unsafe building against intrusion by unauthorized persons in accordance with a uniform standard established by ordinance;
- (c) Extermination of vermin in and about the unsafe premises;
- (d) Removal of trash, debris, or fire hazardous material in and about the unsafe premises;
- (e) Repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, under the State Building Commission rules for new construction or rehabilitation;
- (f) Removal of part of an unsafe building;
- (g) Removal of an unsafe building; and
- (h) Requiring, for an unsafe building that will be sealed for a period of more than 90 days in accordance with standards established by ordinance:
  1. Sealing against intrusion by unauthorized persons and the effects of weather;
  2. Exterior improvements to make the building compatible in appearance with other buildings in the area; and
  3. Continuing maintenance and upkeep of the building and premises.

(2) Notice of the order must be given under § 150.25 (I.C. 36-7-9-25). The ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties. The order supersedes any permit relating to building or land use, whether that permit is obtained before or after the order is issued.

(B) The order must contain:

- (1) The name of the person to whom the order is issued;
- (2) The legal description or address of the unsafe premises that are the subject of the order;
- (3) The action that the order requires;
- (4) The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given;

(5) If a hearing is required, a statement indicating the exact time and place of the hearing, and stating that the person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses, and present arguments;

(6) If a hearing is not required, a statement that an order under divisions (A)(1)(b), (A)(1)(c), or (A)(1)(d) above becomes final ten days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises, and the request is delivered to the enforcement authority before the end of the ten-day period;

(7) A statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with;

(8) A statement indicating the obligation created by § 150.26 (I.C. 36-7-9-27) relating to notification of subsequent interest holders and the enforcement authority; and

(9) The name, address, and telephone number of the enforcement authority.

(C) (1) The order must allow a sufficient time, of at least ten days, but not more than 60 days, from the time when notice of the order is given, to accomplish the required action.

(2) If the order allows more than 30 days to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within 30 days.

(D) The order expires two years from the day the notice of the order is given, unless one or more of the following events occurs within that two-year period:

(1) A complaint requesting judicial review is filed under § 150.09 (I.C. 36-7-9-9);

(2) A contract for action required by the order is let at public bid under § 150.11 (I.C. 36-7-9-11); and/or

(3) A civil action is filed under § 150.17 (I.C. 36-7-9-17).  
(Ord. 2007-03, passed 6-5-2007)

**§ 150.05 MODIFICATION OR RESCISSION OF PREVIOUSLY ISSUED ORDER.**

(A) The enforcement authority may issue an order that modifies the order previously issued.

(B) The enforcement authority may rescind an order previously issued, even if the order has been affirmed by the hearing authority.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.06 HEARING.**

(A) A hearing must be held relative to each order of the enforcement authority, except for an order issued under §§ 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) (I.C. 36-7-9-5(a)(2), I.C. 36-7-9-5(a)(3), I.C. 36-7-9-5(a)(4), or I.C. 36-7-9-5(a)(5)) of this chapter. An order issued under §§ 5(a)(2), 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) of this chapter becomes final ten days after notice is given, unless a hearing is requested before the ten-day period ends by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. The hearing shall be conducted by the hearing authority.

(B) The hearing shall be held on a business day no earlier than ten days after notice of the order is given. The hearing authority may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five days after notice is given, to continue the hearing to a business day not later than 14 days after the hearing date shown on the order. Unless the hearing authority takes action to have the continued hearing held on a definite, specified date, notice of the continued hearing must be given to the person to whom the order was issued at least five days before the continued hearing date, in the manner prescribed by § 150.25 (I.C. 36-7-9-25). If the order being considered at the continued hearing was served by publication, it is sufficient to give notice of the continued hearing by publication unless the enforcement authority has received information in writing that enables it to make service under § 150.25 by a method other than publication.

(C) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses, and present arguments.

(D) (1) At the conclusion of any hearing at which a continuance is not granted, the hearing authority may make findings and take action to:

(a) Affirm the order;

(b) Rescind the order; or

(c) Modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent.

(2) In addition to affirming the order, in those cases in which the hearing authority finds that there has been a willful failure to comply with the order, the hearing authority may impose a civil penalty in an amount not to exceed \$5,000. The effective date of the civil penalty may be postponed for a reasonable period, after which the hearing authority may order the civil penalty reduced or stricken if the hearing authority is satisfied that all work necessary to fully comply with the order has been done. For purposes of an appeal under § 150.08 (I.C. 36-7-9-8) or enforcement of an order under § 150.17 (I.C. 36-7-9-17), action of the hearing authority is considered final upon the affirmation of the order, even though the hearing authority may retain jurisdiction for the ultimate determination of a fine.

(E) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows good cause for this request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.

(F) The board or commission having control over the department shall, at a public hearing, after given notice of the time and place of the hearing by publication in accordance with I.C. 5-3-1 *et seq.*, adopt a schedule setting forth the maximum amount of performance bonds applicable to various types of ordered action. The hearing authority shall use this schedule to fix the amount of the performance bond required under division (E) above.

(G) The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request. However, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.

(H) If a civil penalty under division (E) above is unpaid for more than 15 days after civil penalty is due, a civil penalty under division (D) above may be collected in the same manner as costs under § 150.13 (I.C. 36-7-9-13 and I.C. 36-7-9-13.5). The amount of the civil penalty that is collected shall be deposited in the Unsafe Building Fund.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.07 REVIEW BY COURT OR SUPERIOR COURT.**

(A) An action taken under § 8(d) of this chapter is subject to review by the County Circuit Court or County Superior Court in which the unsafe premises are located, on request of:

- (1) Any person who has a substantial property interest in the unsafe premises; or
- (2) Any person to whom that order was issued.

(B) A person requesting judicial review under this section must file a verified complaint, including the findings of fact and the action taken by the hearing authority. The complaint must be filed within ten days after the date when the action was taken.

(C) An appeal under this section is an action de novo. The court may affirm, modify, or reverse the action taken by the hearing authority.  
(Ord. 2007-03, passed 6-5-2007)

#### **§ 150.08 EMERGENCY ACTION WITHOUT ORDER OR NOTICE.**

(A) If the enforcement authority finds it necessary to take emergency action concerning an unsafe premises in order to protect life, safety, or property, it may take that action without issuing an order or giving notice. However, this emergency action must be limited to removing any immediate danger.

(B) The Department, acting through the enforcement authority, may recover the costs incurred by the enforcement authority in taking emergency action by filing a civil action in the County Circuit Court or County Superior Court against the persons who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises at the time the enforcement authority found it necessary to take emergency action. The Department is not liable for the costs of this civil action.

(C) If an unsafe premises poses an immediate danger to the life or safety of persons occupying or using nearby property, the enforcement authority may, without following this chapter's requirements for issuing an order and giving notice, take emergency action to require persons to vacate and not use the nearby property until the danger has passed. However, any person required to vacate an unsafe premises under this division (C) may challenge, in an emergency court proceeding, the enforcement authority's determination that the premises poses an immediate danger to the life or safety of any person. In an emergency court proceedings, the enforcement authority has the burden of proving that emergency action is necessary to protect from immediate danger the life or safety of persons occupying or using nearby property.

(Ord. 2007-03, passed 6-5-2007)

#### **§ 150.09 ORDER TO SEAL UNSAFE BUILDING PERFORMED BY CONTRACTOR.**

(A) The enforcement authority may cause the action required by an order issued under §§ 5(a)(2), 5(a)(3), 5(a)(4), or 5(a)(5) (I.C. 36-7-9-5(a)(2), (a)(3), or (a)(4)) of this chapter to be performed by a contractor if:

(1) The order has been served, in the manner prescribed by § 150.25 (I.C. 36-7-9-25), on each person having a fee interest, life estate interest, or equitable interest of a contract purchase in the unsafe premises that are the subject of the order;

(2) The order has not been complied with;

(3) A hearing was not required under § 5(b)(6) (I.C. 36-7-9-5(b)(6)) of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and

(4) The order is not being reviewed under § 150.08 (I.C. 36-7-9-8).

(B) The enforcement authority may cause the action required by an order, other than an order under §§ 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, to be performed if:

- (1) Service of an order, in the matter prescribed by § 150.25, has been made on each person having a substantial property interest in the unsafe premises that are the subject of the order;
- (2) The order has been affirmed or modified at the hearing in such a manner that all persons having a substantial property interest in the unsafe premises that are the subject of the order are currently subject to an order requiring the accomplishment of substantially identical action;
- (3) The order, as affirmed or modified at the hearing, has not been complied with; and
- (4) The order is not being reviewed under § 150.08.

(C) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that the enforcement authority intends to perform the work by publication, unless the authority has received information in writing that enables it to make the service under § 150.25 by a method other than publication.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.10 PERFORMANCE OF WORK UNDER ORDER OF ENFORCEMENT AUTHORITY; BIDS; NOTIFICATION; SERVICE.**

(A) The work required by an order of the enforcement authority may be performed in the following manners.

(1) If the work is being performed under an order other than an order under §§ 5(a)(2), 5(a)(3), or 5(a)(4) (I.C. 36-7-9-5(a)(2), (a)(3) or (a)(4)) of this chapter, and if the cost of this work is estimated to be less than \$10,000, the Department, acting through its enforcement authority or other agent, may perform the work by means of its own workers and equipment owned or leased by it. Notice that this work is to be performed must be given to all persons with a substantial property interest, in the manner prescribed in division (C) below at least ten days before the date of performance of the work by the enforcement authority. This notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter and performing the work may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

(2) If the work is being performed under an order other than an order under §§ 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, and if the estimated cost of this work is \$10,000 or more, this work must be let at public bid to a contractor licensed and qualified under law. The obligation to pay costs imposed by § 150.12 (I.C. 36-7-9-12), is based on the condition of the unsafe premises at the time the public bid was accepted. Changes occurring in the condition of the unsafe premises after the public bid was accepted do not eliminate or diminish this obligation.

**Spiceland - Land Usage**

(3) If the work is being performed under an order issued under §§ 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter, the work may be performed by a contractor who has been awarded a base bid contract to perform the work for the enforcement authority, or by the Department, acting through its enforcement authority or other governmental agency and using its own workers and equipment owned or leased by it. Work performed under an order issued under §§ 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter may be performed without further notice to the persons holding a fee interest, life estate interest, or equitable interest of a contract purchaser, and these persons are liable for the costs incurred by the enforcement authority in processing the matter and performing the work, as provided by § 150.12.

(B) Bids may be solicited and accepted for work on more than one property if the bid reflects an allocation of the bid amount among the various unsafe premises in proportion to the work to be accomplished. The part of the bid amount attributable to each of the unsafe premises constitutes the basis for calculating the part of the costs described by § 150.12(A)(1) (I.C. 36-7-9-12(a)(1)).

(C) All persons who have a substantial property interest in the unsafe premises and are subject to an order other than an order under §§ 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter must be notified about the public bid in the manner prescribed by § 150.25 (I.C. 36-7-9-25), by means of a written statement, including:

- (1) The name of the person to whom the order was issued;
- (2) A legal description or address of the unsafe premises that are the subject of the order;
- (3) A statement that a contract is to be let at public bid to a licensed contractor to accomplish work to comply with the order;
- (4) A description of work to be accomplished;
- (5) A statement that both the bid price of the licensed contractor who accomplishes the work and an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter of the unsafe premises may, if not paid, be recorded after a hearing as a lien against all person having a fee simple interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises;
- (6) The time of the bid opening;
- (7) The place of the bid opening; and
- (8) The name, address, and telephone number of the enforcement authority.

(D) If the notice of the statement that public bids are to be let is served by publication, the publication must include the information required by division (C) above, except that it need only include a general description of the work to be accomplished. The publication must also state that a copy of the statement of public bid may be obtained from the enforcement authority.

(E) Notice of the statement that public bids are to be let must be given, at least ten days before the date of the public bid, to all persons who have a substantial property interest in the property and are subject to an order other than an order under §§ 5(a)(2), 5(a)(3), or 5(a)(4) of this chapter.

(F) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication, unless the enforcement authority has received information in writing that enables it to make service under § 150.25 by a method other than publication.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.11 LIABILITY FOR COSTS OF PERSONS HOLDING FEE INTEREST OR LIFE ESTATE INTEREST; AVERAGE PROCESSING EXPENSE.**

(A) When action required by an order is performed by the enforcement authority or by a contractor acting under this section (I.C. 36-7-9-11), each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time when the order requiring the work performed was recorded to the time that the work was completed is jointly and severally responsible for the following costs:

(1) The actual cost of the work performed by enforcement authority or the bid price of work accomplished by the contractor under this section; and

(2) An amount that represents a reasonable forecast of the average processing expense that will be incurred by the enforcement authority in taking the technical administrative, and legal actions concerning typical unsafe premises that are necessary under this chapter so that the action required by an order may be performed by a contractor under this section. In calculating the amount of the average processing expense, the following costs may be considered:

(a) The cost of obtaining reliable information about the identity and location of persons who own a substantial property interest in the unsafe premises;

(b) The cost of notice of orders, notice of statements of rescission, notice of continued hearing, notice of statements that public bids are to be let or that the enforcement authority intends to accomplish the work, and notice that a hearing may be held on the amounts indicated in the record, in accordance with § 150.25 (I.C. 36-7-9-25);

(c) Salaries for employees; and

(d) The cost of supplies, equipment, and office space.

(B) The board or commission having control over the Department shall determine the amount of the average processing expense at the public hearing, after notice has been given in the same manner as is required for other official action of the board or commission. In determining the average processing expense, the board or commission may fix the amount at a full dollar amount that is an even multiple of ten.

(Ord. 2007-03, passed 6-5-2007)

#### **§ 150.12 SUIT FOR COSTS.**

(A) If all or any part of the costs listed in this 12 (I.C. 36-7-9-12) remain unpaid for any unsafe premises (other than unsafe premises owned by a governmental entity) for more than 15 days after the completion of the work, and if the enforcement authority determines that there is a reasonable probability of obtaining recovery, the enforcement authority shall prepare a record stating:

(1) The name and last known address of each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time the order requiring the work to be performed was recorded to the time that the work was completed;

(2) The legal description or address of the unsafe premises that was the subject of work;

(3) The nature of the work that was accomplished;

(4) The amount of the unpaid bid price of the work that was accomplished; and

(5) The amount of the unpaid average processing expense. The record must be in a form approved by the State Board of Accounts.

(B) The enforcement authority, or its head, shall swear to the accuracy of the record before the Clerk of the Circuit Court and deposit the record in the Clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent to the persons named in the record, in the manner prescribed by § 150.25 (I.C. 36-7-9-25).

(C) If, within 30 days after the notice required by division (B) above, a person named in the record files with the Clerk of the Circuit Court a written petition objecting to the claim for payment and requesting a hearing, the Clerk shall enter the cause on the docket of the Circuit or Superior Court as a civil action, and a hearing shall be held on the question in the manner prescribed by I.C. 4-21.5. However, issues that could have been determined under § 150.08 (I.C. 36-7-9-8) may not be entertained at the hearing. At the conclusion of the hearing, the Court shall either sustain the petition or enter a judgment against the person named in the record for the amounts recorded or for modified amounts.

(D) If no petition is filed under division (C) above, the Clerk of the Circuit Court shall enter the cause on the docket of the Court and the Court shall enter a judgment for the amounts stated in the record.

(E) A judgment under divisions (C) or (D) above is a debt and a lien on all the real and personal property of the person named, or a joint and several debt and lien on a the real and personal property of the persons named. The lien on real property is perfected against all creditors and purchasers when the judgment is entered on the judgment docket of the Court. The lien on personal property is perfected by filing a lis pendens notice in the appropriate filing office, as prescribed by the State Rules of Trial Procedure.

(F) Judgments rendered under this section may be enforced in the same manner as all other judgments are enforced.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.13 ESTABLISHMENT OF UNSAFE BUILDING FUND.**

(A) The enforcement authority shall establish in its operating budget a fund designated as the Unsafe Building Fund. Any balance remaining at the end of a fiscal year shall be carried over in the Fund for the following year and does not revert to the General Fund.

(B) Money for the Unsafe Building Fund may be received from any source, including appropriations by local, state, or federal governments, and donations. The following money shall be deposited in the Fund:

(1) Money received as payment for or settlement of obligations or judgments established under §§ 150.09 through 150.13 and 150.17 through 150.22 (I.C. 36-7-9-9 through 36-7-9-13 and I.C. 36-7-9-17 through 36-7-9-22);

(2) Money received from bonds posted under § 150.07 (I.C. 36-7-9-7);

(3) Money received in satisfaction of receivers' notes or certificates that were issued under § 150.20 (I.C. 36-7-9-20) and were purchased with money from the Unsafe Building Fund; and

(4) Money received for payment or settlement of civil penalties imposed under § 150.07.

(C) Money in the Unsafe Building Fund may be used for the expenses incurred in carrying out the purposes of this chapter, including:

(1) The cost of obtaining reliable information about the identity and location of each person who owns a substantial property interest in the unsafe premises;

(2) The cost of an examination of an unsafe building by a registered architect or a registered engineer not employed by the Department;

(3) The cost of surveys necessary to determine the location and dimensions of real property on which an unsafe building is located;

(4) The cost of giving notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let in the manner prescribed by § 150.25 (I.C. 36-7-9-5);

(5) The bid price of work by a contractor under § 150.10 (I.C. 36-7-9-10) or §§ 150.17 through 150.22;

(6) The cost of emergency action under § 150.09 (I.C. 36-7-9-9); and

(7) The cost of notes or receivers' certificates issued under § 150.20.

(D) Payment of money from the Unsafe Building Fund must be made in accordance with applicable law.

(Ord. 2007-03, passed 6-5-2007)

#### **§ 150.14 TRANSFER OF FUNDS TO UNSAFE BUILDING FUND.**

(A) *Generally.* The board or commission having control over the Department may transfer all or part of the money in a Building Demolition, Repair, and Contingent Fund that was established by I.C. 18-5-5-7 (before its repeal on 9-1-1981) to the Unsafe Building Fund.

(B) *Unpaid costs for unsafe premises repairs; notice; certification as special assessment; collection as delinquent taxes; disposition of collections.*

(1) This division (B) does not apply to the collection of an amount if a court determines under § 150.13 that the enforcement authority is not entitled to the amount.

(2) If all or any part of the costs listed in § 150.12 remain unpaid for any unsafe premises (other than unsafe premises owned by a governmental entity) for more than 15 days after completion of the work, the enforcement authority may send notice under § 150.25 to each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises. The notice must require full payment of the amount owed within 30 days.

(3) If full payment of the amount owed is not made less than 30 days after the notice is delivered, the enforcement officer may certify the following information to the County Auditor:

(a) The name of each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises;

(b) The description of the unsafe premises, as shown by the records of the County Auditor;  
and

(c) The amount of the delinquent payment, including all costs described in § 150.12.

(4) The County Auditor shall place the total amount certified under division (B)(3) above on the tax duplicate for the affected property as a special assessment. The total amount, including accrued interest, shall be collection as delinquent taxes are collected.

(5) An amount collected under division (B)(4) above, after all other taxes have been collected and disbursed, shall be disbursed to the Unsafe Building Fund.

(6) A judgment entered under § 150.13 may be collected under this section. However, a judgment lien need not be obtained under § 150.13 before a debt is certified under this section. (Ord. 2007-03, passed 6-5-2007)

**§ 150.15 ISSUANCE OF INSPECTION WARRANTS.**

(A) If the owners or those in possession of a building refuse inspection, an inspection officer of the enforcement authority may obtain an inspection warranty from any court of record in the county in which the building is located in order to determine if the building is an unsafe building. The court shall issue the warrant subject to the following conditions.

(1) The person seeking the warrant must establish that the building to be searched or inspected is to be searched or inspected as part of a legally authorized program of inspection that naturally includes the building, or that there is probable cause for believing that a condition, object, activity, or circumstance legally justifies a search or inspection of that building.

(2) An affidavit establishing one of the grounds described in division (A)(1) above must be signed under oath or affirmation by the affiant.

(3) The court must examine the affiant under oath or affirmation to verify the accuracy of the affidavit.

(B) The warrant is valid only if it:

(1) Is signed by the judge of the court and bears the date and hour of its issuance above that signature, with a notation that the warrant is valid for only 48 hours after its issuance;

(2) Describes (either directly or by reference to the affidavit) the building where the search or inspection is to occur so that the executor of the warrant and owner or the possessor of the building can reasonably determine what property the warrant authorizes an inspection of;

(3) Indicates the conditions, objects, activities, or circumstances that the inspection is intended to check or reveal; and

(4) Is attached to the affidavit required to be made in order to obtain the warrant.

(C) A warrant issued under this section is valid for only 48 hours after its issuance, must be personally served upon the owner or possessor of the building, and must be returned within 72 hours. (Ord. 2007-03, passed 6-5-2007)

#### **§ 150.16 ENFORCEMENT THROUGH CIVIL ACTION AUTHORIZED.**

(A) The Department, acting through its enforcement authority, may bring a civil action regarding unsafe premises in the County Circuit Court, County Superior Court, or County Municipal Court. The Department is not liable for the costs of such an action. The Court may grant one or more of the kinds of relief authorized by §§ 150.18 through 150.22 (I.C. 36-7-9-18 through 36-7-9-22).

(B) A civil action may not be initiated under this section before the final date of an order or an extension of an order under § 5(c) of this chapter requiring:

(1) The completion; or

(2) A substantial beginning toward accomplishing the completion of the required remedial action.

(C) A community organization may not initiate a civil action under this section if the enforcement authority has issued a final order that the required remedial action has been satisfactorily completed.

(D) A community organization may not initiate a civil action under this section if the real property that is the subject of the civil action is located outside the specific geographic boundaries of the area defined in the bylaws or articles of incorporation of the community organization.

(E) At least 60 days before commencing a civil action under this section, a community organization must issue a notice by certified mail, return receipt requested, that:

(1) Specifies:

(a) The nature of the alleged nuisance;

(b) The date of the nuisance was first discovered;

(c) The location on the property where the nuisance is allegedly occurring;

(d) The intent of the community organization to bring a civil action under this section; and

(e) The relief sought in the action.

(2) Is provided to:

(a) The owner of record of the premises;

- (b) Tenants located on the premises;
- (c) The enforcement authority; and
- (d) Any person that possesses an interest of record.

(F) In any action filed by a community organization under this section, a court may award reasonable attorneys' fees, court costs, and other reasonable expenses of litigation to the prevailing party. (Ord. 2007-03, passed 6-5-2007)

**§ 150.17 INJUNCTIONS.**

A court acting under this section (I.C. 36-7-9-17) may grant a mandatory or prohibitory injunction against any person that will cause the order to be complied with, if it is shown that:

(A) An order, which need not set a hearing date, was issued to the person;

(B) The person has a property interest in the unsafe premises that are the subject of the order that would allow the person to take the action required by the order;

(C) The building that is the subject of the order is an unsafe building; and

(D) The order is not being reviewed under § 150.08 (I.C. 36-7-9-8).  
(Ord. 2007-03, passed 6-5-2007)

**§ 150.18 CIVIL PENALTY.**

(A) A court acting under § 150.17 (I.C. 36-7-9-17) may impose a civil penalty not to exceed \$5,000 against any person if the conditions of this section (I.C. 36-7-9-18) are met. The penalty imposed may not be substantially less than the cost of complying with the order, unless that cost exceeds \$5,000. The effective date of the penalty may be postponed for a period not to exceed 30 days, after which the court may order the penalty reduced or stricken if it is satisfied that all work necessary to fully comply with the order has been done.

(B) (1) On request of the enforcement authority, the court shall enter a judgment in the amount of the penalty.

(2) If there is more than one party defendant, the penalty is separately applicable to each defendant.

(3) The amount of a penalty that is collected shall be deposited in the Unsafe Building Fund.  
(Ord. 2007-03, passed 6-5-2007)

**§ 150.19 APPOINTMENT OF RECEIVER.**

(A) A court acting under § 150.17 (I.C. 36-7-9-17) may appoint a receiver for the unsafe premises, subject to the following conditions.

(1) The purpose of the receivership must be to take possession of the unsafe premises for a period sufficient to accomplish and pay for repairs and improvements.

(2) The receiver may be a nonprofit corporation, the primary purpose of which is the improvement of housing conditions in the county where the unsafe premises are located, or may be any other capable person residing in the county.

(3) Notwithstanding any prior assignments of the rents and other income of the unsafe premises, the receiver must collect and use that income to repair or remove the defects as required by the order, and may, upon approval by the court, make repairs and improvements in addition to those specified in the order or required by applicable statutes, ordinances, codes, or regulations.

(4) The receiver may make any contracts and do all things necessary to accomplish the repair and improvement of the unsafe premises.

(5) The court may, after a hearing, authorize the receiver to obtain monies needed to accomplish the repairs and improvement by the issuance and sale of notes or receiver's certificates bearing interest fixed by the court. The notes or certificates are a first lien on the unsafe premises and the rents and income of the unsafe building. This lien is superior to all other assignments of rents, liens, mortgages, or other encumbrances on the property, except taxes, if, within 60 days following the sale or transfer for value of the notes by the receiver, the holder of the notes files a notice containing the following information in the County Recorder's office:

(a) The legal description of the tract of real property on which the unsafe building is located;

(b) The face amount and interest rate of the note or certificate;

(c) The date when the note or certificate was sold or transferred by the receiver; and

(d) The date of maturity.

(6) Upon payment to the holder of a receiver's note or certificate of the face amount and interest, and upon filing in the Recorder's office of a sworn statement of payment, the lien of that note or certificate is released. Upon a default in payment on a receiver's note or certificate, prescribed for mechanic's liens or mortgages. However, the foreclosure proceedings must be commenced within two years after the date of default.

(7) The receiver is entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages. The fees, commissions, and expenses shall be paid out of the rents and incomes of the property in receivership.

(B) The issuance of an order concerning unsafe premises is not a prerequisite to the appointment of a receiver nor does such an order prevent the appointment of a receiver.

(C) If the enforcement authority requests the appointment of a receiver, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(D) A court, when granting powers and duties to a receiver, shall consider:

- (1) The occupancy of the unsafe premises;
- (2) The overall condition of the property;
- (3) The hazard to public health, safety, and welfare;
- (4) The number of persons having a substantial property interest in the unsafe premises; and
- (5) Other factors the court considers relevant.

(E) Instead of appointing a receiver to sell or rehabilitate an unsafe premises, the court may permit an owner, mortgagee, or person with substantial interest in the unsafe premises to rehabilitate the premises if the owner, mortgagee, or person with substantial interest:

- (1) Demonstrates ability to complete the rehabilitation within a reasonable time, but not to exceed 60 days;
- (2) Agrees to comply within a specified schedule for rehabilitation; and
- (3) Posts a bond as security for performance of the required work in compliance with the specified schedule in division (E)(2) above.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.20 AUTHORIZATION TO REQUIRE PERFORMANCE OF ORDER BY CONTRACT; PARTY DEFENDANTS; COSTS AND EXPENSES AS JUDGMENT.**

(A) A court acting under § 150.17 (I.C. 36-7-9-17) may authorize the Department, acting through its enforcement authority, to cause the action required by acting through its enforcement authority, to cause the action required by the order to be performed by a contractor licensed and qualified under law, if it is shown that:

(1) An order was issued to each person having a substantial property interest in the unsafe premises;

(2) Each of the orders has been affirmed or modified at a hearing in a manner that all persons having a substantial property interest in the unsafe premises that are the subject of the orders are currently subject to an order requiring substantially identical action;

(3) The order, as affirmed or modified at the hearing, has not been complied with;

(4) The building that is the subject of the order is an unsafe building; and

(5) The order is not being reviewed under § 150.08 (I.C. 36-7-9-8).

(B) If the enforcement authority requests permission to cause the action required by the order to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(C) The cost of the work and the processing expenses incurred by the enforcement authority computed under § 150.12 (I.C. 36-7-9-12), may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

(Ord. 2007-03, passed 6-5-2007)

#### **§ 150.21 EMERGENCIES; COURT ORDER AUTHORIZING ACTION TO MAKE PREMISES SAFE; JUDGMENT FOR COSTS.**

(A) A court acting under § 150.17 (I.C. 36-7-9-17) may set a hearing to be held within ten days after the filing of a complaint alleging the existence of unsafe premises presenting an immediate danger to the health and safety of the surrounding community sufficient to warrant emergency action.

(1) Upon a finding at the hearing in favor of the Department, the court may:

(a) Permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law;

(b) Permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by the contractor licensed and qualified under law after the defendants have had a reasonable time, as established by the court, to make the unsafe premises safe and have failed to complete the necessary action; or

(c) Grant a mandatory injunction relative to the unsafe premises that would require a defendant who has an interest in the premises that allows the defendant to take corrective action to immediately make the premises safe.

(2) In granting relief under divisions (A)(1)(b) or (A)(1)(c) above, the court shall set a date certain for the completion of the necessary action and shall hold a hearing within ten days after that date to determine whether the necessary action has been completed.

(B) The issuance of an order concerning the unsafe premises is not a prerequisite to permission by the court to cause action to be performed on the unsafe premises. If an order has been issued concerning the unsafe premises, it does not prevent the permission by the court to cause action to be performed on the unsafe premises.

(C) If the enforcement authority requests authority to cause action on the unsafe premises to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(D) The cost of accomplishing the work may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.22 CHANGE OF VENUE PROHIBITED; CHANGE OF JUDGE ALLOWED.**

A change of venue may not be allowed in an action filed under §§ 150.08, 150.13, or 150.17 (I.C. 36-7-9-8, I.C. 36-7-9-13, or I.C. 36-7-9-17), but a change of judge shall be allowed in the same manner as is provided for other civil matters.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.23 PRECEDENCE.**

An action filed under §§ 150.08 or 150.17 (I.C. 36-7-9-8 or I.C. 36-7-9-17) takes precedence over other pending litigation, and shall be tried and determined by the court at as early a date as possible.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.24 NOTICE REQUIREMENTS; SERVICE BY PUBLICATION; FILING AFFIDAVIT OF SERVICE; DATE OF SERVICE; CIRCUMSTANCES ABROGATING NEED FOR SERVICE; IMPLIED CONSENT TO ACTION.**

(A) Notice of orders, notice of continued hearings without a specified date, and notice of claims for payment must be given by:

(1) Sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested;

(2) Delivering a copy of the order or statement personally to the person to be notified; or

(3) Leaving a copy of the order or statement at the dwelling or usual place of abode of the person to be notified.

(B) If, after a reasonable effort, service is not obtained by a means described in division (A) above, service may be made by publishing a notice of the order or statement in accordance with I.C. 5-3-1 *et seq.* in the county where the unsafe premises are located. However, publication may be made on consecutive days. If service of an order is made by publication, the publication must include the information required by subdivisions (1), (2), (4), (5), (6), (7), and (9) of § 5(b) (I.C. 36-7-9-5(b)(1), (2), (4)-(7), and (9)) of this chapter, and must also include a statement indicating generally what action is required by the order and that the exact terms of the order may be obtained from the enforcement authority.

(C) When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that he or she has made the service, the manner in which service was made, to whom the order or statement was issued, the nature of the order or statement, and the date of service. The affidavit must be placed on file with the enforcement authority.

(D) The date when notice of the order or statement is considered given is as follows.

(1) If the order or statement is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at his or her dwelling or usual place of abode.

(2) If the order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.

(3) Notice by publication is considered given on the date of the second day that publication was made.

(E) Notice of orders, notice of continued hearings without a specified date, and notice of a statement that public bids are to be let need not be given to a person holding a property interest in an unsafe premises if:

(1) No instrument reflecting the property interest held by the person is recorded in the Recorder's office of the county where the unsafe premises is located;

(2) The order or statement was recorded in accordance with § 26 (I.C. 36-7-9-26) of this chapter; and

(3) The enforcement authority has received neither written information nor actual notice of the identity of the person who holds a property interest in the unsafe premises.

(F) A person who fails to record an instrument reflecting an interest in his or her unsafe premises is considered to consent to action taken under this chapter relative to which notice would otherwise be given.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.25 RECORDING OF ORDERS AND STATEMENTS; EFFECT OF ORDER; INTEREST IN PREMISES UNDER ORDER TAKEN SUBJECT TO TERMS OF STATEMENT OF PUBLIC BIDS.**

(A) The enforcement authority shall record in the office of the County Recorder orders issued under §§ 5(a)(6), 5(a)(7) or 6(a) of this chapter. If the enforcement authority records an order issued under §§ 5(a)(6), 5(a)(7), or 6(a) of this chapter, statements of rescission issued under § 150.06(B), statements that public bids are to be let under § 150.11, and records of action in which the order is affirmed, modified, or rescinded taken by the hearing authority under § 150.07 shall be recorded. The Recorder shall charge the fee required under I.C. 36-2-7-10 for recording these items.

(B) A person who takes an interest in unsafe premises that are the subject of an order takes that interest, whether or not a hearing has been held, subject to the terms of the order and other documents recorder under division (A) above and in a manner that all of the requirements of §§ 150.10, 150.11, and 150.17 through 150.22 (I.C. 36-7-9-10, I.C. 36-7-9-11, and I.C. 36-7-9-17 through 36-7-9-22) relating to the issuance of orders, service of orders, and affirmation of orders are considered satisfied. If a hearing has been held, the interest is taken subject to the terms of the order as modified at the hearing, in other documents recorded under division (A) above, and in a manner that all of the requirements of §§ 150.10, 150.11, and 150.17 through 150.22 relating to the issuance of orders, service of orders, and modification of orders at hearing are considered satisfied.

(C) A person who takes an interest in unsafe premises that are the subject of a recorded statement that public bids are to be let takes the interest subject to the terms of the statement and in a manner that the notice of the statement required by § 150.11 is considered given to the person.

(Ord. 2007-03, passed 6-5-2007)

**§ 150.26 TRANSFERS OF PROPERTY BY PERSONS NOT COMPLYING WITH ORDERS.**

(A) A person who has been issued and has received notice of an order relative to unsafe premises and has not complied with that order:

(1) Must supply full information regarding the order to a person who takes or agrees to take a substantial property interesting the unsafe premises before transferring or agreeing to transfer that interest; and

(2) Must, within five days after transferring or agreeing to transfer a substantial property interest in the unsafe premises, supply the enforcement authority with written copies of:

(a) The full name, address, and telephone number of the person taking a substantial property interest in the unsafe premises; and

(b) The legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished.

(B) If a judgment is obtained against the department, enforcement authority, or other governmental entity for the failure of that entity to provide notice to persons holding an interest in unsafe premises in an action taken by the entity under this chapter, a person who failed to comply with this section is liable to the entity for the amount of the judgment if it can be shown that the entity's failure to give notice was a result of that person's failure.

(Ord. 2007-03, passed 6-5-2007)

#### **§ 150.27 VIOLATIONS.**

(A) A person commits a Class C infraction who:

(1) Remains in, uses, or enters a building in violation of an order made under this chapter;

(2) Knowingly interferes with or delays the carrying out of an order made under this chapter;

(3) Knowingly obstructs, damages, or interferes with persons engaged or property used in performing any work or duty under this chapter; or

(4) Fails to comply with § 150.26 (I.C. 36-7-9-27).

(B) Each day that the violation continues constitutes a separate offense.

(Ord. 2007-03, passed 6-5-2007) Penalty, see § 10.99

## CHAPTER 151: BUILDING REGULATIONS

### Section

151.01 State Building Code adopted by reference

151.02 State enforcement statutes adopted by reference

### § 151.01 STATE BUILDING CODE ADOPTED BY REFERENCE.

Pursuant to the authority granted under I.C. 22-13-2-3, the town hereby adopts by reference the State Building Code, contained in 675 I.A.C. 13-2.4-1 *et seq.*, including any future amendments.

***Statutory reference:***

*Authority to adopt future building code amendments by reference, see I.C. 22-13-2-3*

### § 151.02 STATE ENFORCEMENT STATUTES ADOPTED BY REFERENCE.

(A) Pursuant to the authority granted under I.C. 36-7-9-3, the town hereby adopts by reference I.C. 36-7-9 *et seq.*, pertaining to enforcement of building standards.

(B) The enforcement authority responsible for the administration of the statutes adopted under this section shall be the town executive, or any other executive department as may be established or designated by ordinance.

(C) For purposes of this section, ***SUBSTANTIAL PROPERTY INTEREST*** shall have the same meaning as set forth in I.C. 36-7-9-2.



## CHAPTER 152: FLOOD HAZARDS

### Section

#### *General Provisions*

- 152.01 Statutory authorization
- 152.02 Findings of fact
- 152.03 Statement of purpose
- 152.04 Objectives
- 152.05 Definitions
- 152.06 Lands to which this chapter applies
- 152.07 Basis for establishing regulatory flood data
- 152.08 Establishment of floodplain development permit
- 152.09 Compliance
- 152.10 Abrogation and greater restrictions
- 152.11 Discrepancy between mapped floodplain and actual ground elevations
- 152.12 Interpretation
- 152.13 Warning and disclaimer of liability
- 152.14 Violations

#### *Administration*

- 152.25 Designation of Administrator
- 152.26 Permit procedures
- 152.27 Duties and responsibilities of the Floodplain Administrator

#### *Provisions for Flood Hazard Reduction*

- 152.40 General standards
- 152.41 Specific standards
- 152.42 Standards for subdivision proposals
- 152.43 Critical facility
- 152.44 Standards for identified floodways
- 152.45 Standards for identified fringe
- 152.46 Standards for SFHAs without established base flood elevation and/or floodways/fringes

*Variance Procedures*

152.60 Designation of Variance and Appeals Board

152.61 Duties of Variance and Appeals Board

152.62 Variance procedures

152.63 Conditions for variances

152.64 Variance notification

152.65 Historic structure

152.66 Special conditions

***Editor's note:***

*This chapter is a codification of Henry County Ord. No. 2007-1-1-10, which was adopted by the town in Ord. 2007-04, passed 5-5-2007.*

**GENERAL PROVISIONS****§ 152.01 STATUTORY AUTHORIZATION.**

The State Legislature has in I.C. 36-7-4 *et seq.* and I.C. 14-28-4 *et seq.* granted the power to local government units to control land use within their jurisdictions. Therefore, the County Board of Commissioners does hereby adopt the following floodplain management regulations.  
(Ord. 2007-04, passed 5-5-2007)

**§ 152.02 FINDINGS OF FACT.**

(A) The flood hazard areas of unincorporated the county and the incorporated Towns of Dunreith, Lewisville, Middletown, Mooreland, Spiceland, Springport, and Sulphur Springs are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.  
(Ord. 2007-04, passed 5-5-2007)

**§ 152.03 STATEMENT OF PURPOSE.**

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(A) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities which serve the uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

(D) Control filling, grading, dredging, and other development which may increase erosion or flood damage;

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and

(F) Make federally subsidized flood insurance available for structures and their contents in the jurisdiction of the County Planning Commission (including the unincorporated areas of the county and the incorporated Towns of Dunreith, Lewisville, Middletown, Mooreland, Spiceland, Springport, and Sulphur Springs which have designated the County Planning Commission as their planning agency) by fulfilling the requirements of the National Flood Insurance Program.

(Ord. 2007-04, passed 5-5-2007)

**§ 152.04 OBJECTIVES.**

The objectives of this chapter are:

(A) To protect human life and health;

(B) To minimize expenditure of public money for costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business interruptions;

(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains;

(F) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and

(G) To ensure that potential homebuyers are notified that property is in a flood area.  
(Ord. 2007-04, passed 5-5-2007)

### § 152.05 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**A ZONE.** Portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In **A ZONES**, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR, and Zone A99 on a FIRM or FHBM. The definitions are presented below.

(1) **ZONE A.** Areas subject to inundation by the 1% annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown. Mandatory flood insurance purchase requirements apply.

(2) **ZONES AE and A1-A30.** Areas subject to inundation by the 1% annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. Mandatory flood insurance purchase requirements apply. (Zone AE is on new and revised maps in place of Zones A1-A30.)

(3) **ZONE AH.** Areas subject to inundation by 1% annual chance shallow flooding (usually areas of ponding) where average depths are one to three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

(4) **ZONE AO.** Areas subject to inundation by 1% annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

(5) **ZONE AR.** Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection. Mandatory flood insurance purchase requirements apply.

(6) **ZONE A99.** Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for

insurance rating purposes. **ZONE A99** may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown. Mandatory flood insurance purchase requirements apply.

**ACCESSORY STRUCTURE (APPURTENANT STRUCTURE).** A structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. **ACCESSORY STRUCTURES** should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

**ADDITION (TO AN EXISTING STRUCTURE).** Any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

**APPEAL.** A request for a review of the Floodplain Administrator's interpretation of any provision of this chapter or a request for a variance.

**AREA OF SHALLOW FLOODING.** A designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. The flooding is characterized by ponding or sheet flow.

**BASE FLOOD ELEVATION (BFE).** The elevation of the 1% annual chance flood.

**BASEMENT.** The portion of a structure having its floor sub-grade (below ground level) on all sides.

**BUILDING.** See **STRUCTURE**.

**COMMUNITY.** A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

**COMMUNITY RATING SYSTEM (CRS).** A program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

**CRITICAL FACILITY.** A facility for which even a slight chance of flooding might be too great. **CRITICAL FACILITIES** include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, installations which produce, use, or store hazardous materials or hazardous waste.

***DEVELOPMENT.***

(1) Any human-made change to improved or unimproved real estate, including, but not limited to:

- (a) Construction, reconstruction, or placement of a structure or any addition to a structure;
- (b) Installing a manufactured home on a site, preparing a site for a manufactured home or installing recreational vehicle on a site for more than 180 days;
- (c) Installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (d) Construction of flood control structures such as levees, dikes, dams, channel improvements, and the like;
- (e) Mining, dredging, filling, grading, excavation, or drilling operations;
- (f) Construction and/or reconstruction of bridges or culverts;
- (g) Storage of materials; or
- (h) Any other activity that might change the direction, height, or velocity of flood or surface waters.

(2) ***DEVELOPMENT*** does not include activities such as the maintenance of existing structures and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

***ELEVATED STRUCTURE.*** A non-basement structure built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

***ELEVATION CERTIFICATE.*** A certified statement that verifies a structure's elevation information.

***EMERGENCY PROGRAM.***

- (1) The first phase under which a community participates in the NFIP.
- (2) It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

***ENCROACHMENT.*** The advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**EXISTING CONSTRUCTION.** Any structure for which the **START OF CONSTRUCTION** commenced before the effective date of the community's first floodplain ordinance.

**EXISTING MANUFACTURED HOME PARK or SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK or SUBDIVISION.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FEMA.** The Federal Emergency Management Agency.

**FIVE HUNDRED YEAR (500-YEAR) FLOOD.** The flood that has a 0.2% chance of being equaled or exceeded in any year.

**FLOOD.** A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

**FLOOD BOUNDARY AND FLOODWAY MAP (FBFM).** An official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

**FLOOD HAZARD BOUNDARY MAP (FHBM).** An official map of a community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as Zone A.

**FLOOD INSURANCE RATE MAP (FIRM).** An official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS).** The official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.

**FLOODPLAIN.** The channel proper and the areas adjoining any wetland, lake or watercourse which have been or hereafter may be covered by the regulatory flood. The **FLOODPLAIN** includes both the floodway and the fringe districts.

**FLOODPLAIN MANAGEMENT.** The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**FLOODPLAIN MANAGEMENT REGULATIONS.** This chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. **FLOODPLAIN MANAGEMENT REGULATIONS** are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.

**FLOOD PROTECTION GRADE (FPG).** The elevation of the regulatory flood plus two feet at any given location in the SFHA. (See **FREEBOARD**.)

**FLOODPROOFING (DRY FLOODPROOFING).** A method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

**FLOODPROOFING CERTIFICATE.** A form used to certify compliance for nonresidential structures as an alternative to elevating structures to or above the FPG. This certification must be by a registered professional engineer or architect.

**FLOODWAY.** The channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

**FREEBOARD.** A factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

**FRINGE.** Those portions of the floodplain lying outside the floodway.

**FUNCTIONALLY DEPENDENT FACILITY.** A facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

**HARDSHIP.** As related to variances of this chapter, means the exceptional hardship that would result from a failure to grant the requested variance. The Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**HIGHEST ADJACENT GRADE.** The highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

**HISTORIC STRUCTURE.** Any structure individually listed on the National Register of Historic Places or the State Register of Historic Sites and Structures.

**INCREASED COST OF COMPLIANCE (ICC).** The cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after 6-1-1997, will include **ICC** coverage.

**LETTER OF MAP AMENDMENT (LOMA).** An amendment to the currently effective FEMA map that establishes that a property is not located in a SFHA. A **LOMA** is only issued by FEMA.

**LETTER OF MAP REVISION (LOMR).** An official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

**LETTER OF MAP REVISION BASED ON FILL (LOMR-F).** An official revision by letter to an effective NFIP map. A **LOMR-F** provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

**LOWEST ADJACENT GRADE.** The lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

**LOWEST FLOOR.** The lowest of the following:

- (1) The top of the lowest level of the structure;
- (2) The top of the basement floor;
- (3) The top of the garage floor, if the garage is the lowest level of the structure;
- (4) The top of the first floor of a structure elevated on pilings or pillars;

(5) The top of the first floor of a structure constructed with a crawl space, provided that the lowest point of the interior grade is at or above the BFE and construction meets requirements of division (6)(a) below; or

(6) The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:

(a) The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, by providing a minimum of two openings (in addition to doorways and windows) having a total net area of one square inch for every square foot of enclosed area subject to flooding. The bottom of all the openings shall be no higher than one foot above grade; and

(b) The enclosed space shall be usable solely for the parking of vehicles and building access.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term **MANUFACTURED HOME** does not include a **RECREATIONAL VEHICLE**.

**MANUFACTURED HOME PARK or SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MAP AMENDMENT.** A change to an effective NFIP map that results in the exclusion from the SFHA of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first NFIP map that showed the structure or parcel to be within the SFHA).

**MAP PANEL NUMBER.** The four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised. (The letter "A" is not used by FEMA; the letter "B" is the first revision.)

**MARKET VALUE.** The building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. **MARKET VALUE** can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

**MITIGATION.** Sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of **MITIGATION** is two-fold: to protect people and structures, and to minimize the cost of disaster response and recovery.

**NATIONAL FLOOD INSURANCE PROGRAM (NFIP).** The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.

**NATIONAL GEODETIC VERTICAL DATUM (NGVD).** As corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the floodplain.

**NEW CONSTRUCTION.** Any structure for which the **START OF CONSTRUCTION** commenced after the effective date of the community's first floodplain ordinance.

**NEW MANUFACTURED HOME PARK or SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.

**NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88).** As adopted in 1993, is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

**OBSTRUCTION.** Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

**ONE-HUNDRED YEAR (100-YEAR) FLOOD.** The flood that has a 1% chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the 1% annual chance flood. See **REGULATORY FLOOD**.

**ONE PERCENT (1%) ANNUAL CHANCE FLOOD.** The flood that has a 1% chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the 1% annual chance flood. See **REGULATORY FLOOD**.

**PARTICIPATING COMMUNITY.** Any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

**PHYSICAL MAP REVISION (PMR).** An official republication of a community's FEMA map to effect changes to base (1% annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

**POST-FIRM CONSTRUCTION.** Construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after 12-31-1974, whichever is later.

**PRE-FIRM CONSTRUCTION.** Construction or substantial improvement, which started on or before 12-31-1974, or before the effective date of the initial FIRM of the community, whichever is later.

**PROBATION.** A means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

**PUBLIC SAFETY AND NUISANCE.** Anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

**REGULAR PROGRAM.** The phase of the community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

**REGULATORY FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the State Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in § 152.07. The **REGULATORY FLOOD** is also known by the term **BASE FLOOD, 1% ANNUAL CHANCE FLOOD, and 100-YEAR FLOOD.**

**REPETITIVE LOSS.** Flood-related damages sustained by a structure on two separate occasions during a ten-year period ending on the date of the event for which the second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25% of the market value of the structure at the time of each flood event.

**SECTION (§) 1316.** The section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

***SPECIAL FLOOD HAZARD AREA (SFHA).*** Those lands within the jurisdictions of the County Planning Commission subject to inundation by the regulatory flood. The *SFHAs* of the county are generally identified as such on the Flood Insurance Rate Map of the county and Incorporated Areas dated 9-4-1987, as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, AI-A30, AH, AR, A99, or AO).

***START OF CONSTRUCTION.*** Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement or permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footing, installation of piles, construction of columns, or any work beyond the stage of excavation for placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

***STRUCTURE.*** A structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

***SUBSTANTIAL DAMAGE.*** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

***SUBSTANTIAL IMPROVEMENT.*** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the *START OF CONSTRUCTION* of the improvement. This term includes structures that have incurred *SUBSTANTIAL DAMAGE* or repetitive loss regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a *HISTORIC STRUCTURE*, provided that the alteration will not preclude the structures continued designation as a *HISTORIC STRUCTURE*.

***SUSPENSION.*** The removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

***VARIANCE.*** A grant of relief from the requirements of this chapter, which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

**VIOLATION.** The failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation, other certification, or other evidence of compliance required in this chapter is presumed to be in violation until the time as that documentation is provided.

**WATERCOURSE.** A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. **WATERCOURSE** includes specifically designated areas in which substantial flood damage may occur.

**WATER SURFACE ELEVATION.** The height, in relation to the North American Vertical Datum of 1988 (NAVD 88) or National Geodetic Vertical Datum of 1929 (NGVD) (other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

**X ZONE.** The area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMS (B zones on older FIRMS) designate areas subject to inundation by the flood with a 0.2% chance of being equaled or exceeded (the 500-year flood). Unshaded **X ZONES** (C zones on older FIRMS) designate areas where the annual exceedance probability of flooding is less than 0.2%.

**ZONE.** A geographical area shown on a FHBM or FIRM that reflects the severity or type of flooding in the area.

**ZONE A.** (See definition for **A ZONE**.)

**ZONE B, C, and X.** Areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (**ZONE X** is used on new and revised maps in place of **ZONES B AND C**.)  
(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.06 LANDS TO WHICH THIS CHAPTER APPLIES.**

This chapter shall apply to all SFHAs within the jurisdiction of the County Planning Commission.  
(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.07 BASIS FOR ESTABLISHING REGULATORY FLOOD DATA.**

(A) This chapter's protection standard is the regulatory flood. The best available regulatory flood data is listed below.

(B) Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the State Department of Natural Resources for review and approval.

(1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs shall be as delineated on the 100-year flood profiles in the Flood Insurance Study of the county and Incorporated Areas, dated 9-4-1987 and the corresponding FIRM dated 9-4-1987, as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.

(2) The regulatory flood elevation, floodway, and fringe limits for each of the unstudied SFHAs delineated as an “A Zone” on the FIRM of the county and incorporated areas shall be according to the best data available as provided by the State Department of Natural Resources.  
(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.08 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities in areas of special flood hazard.  
(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.09 COMPLIANCE.**

No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this chapter and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this chapter and other applicable regulations.  
(Ord. 2007-04, passed 5-5-2007) Penalty, see § 10.99

#### **§ 152.10 ABROGATION AND GREATER RESTRICTIONS.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.  
(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.11 DISCREPANCY BETWEEN MAPPED FLOODPLAIN AND ACTUAL GROUND ELEVATIONS.**

(A) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.

(B) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.

(C) If the elevation (natural grade) of the site in question is above the base flood elevation, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner should be advised to apply for a LOMA.  
(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.12 INTERPRETATION.**

In the interpretation and application of this chapter all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.  
(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.13 WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this chapter does not create any liability on the part of the County Planning Commission, the State Department of Natural Resources, or the state, for any flood damage that results from reliance on this chapter or any administrative decision made lawfully thereunder.  
(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.14 VIOLATIONS.**

(A) Failure to obtain a floodplain development permit in the SFHA or failure to comply with the requirements of a floodplain development permit or conditions of a variance shall be deemed to be a violation of this chapter.

(B) All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the County Development Code.

(1) A separate offense shall be deemed to occur for each day the violation continues to exist.

(2) The County Planning Commission shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.

(3) (a) Nothing herein shall prevent the county from taking such other lawful action to prevent or remedy any violations.

(b) All costs connected therewith shall accrue to the person or persons responsible.  
(Ord. 2007-04, passed 5-5-2007) Penalty, see § 10.99

**ADMINISTRATION**

**§ 152.25 DESIGNATION OF ADMINISTRATOR.**

The County Board of Commissioners hereby appoints the Zoning Administrator for the County Planning Commission to administer and implement the provisions of this chapter and is herein referred to as the Floodplain Administrator.

(Ord. 2007-04, passed 5-5-2007)

**§ 152.26 PERMIT PROCEDURES.**

(A) Application for a floodplain development permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing.

(B) Specifically, the following information is required.

(1) *Application stage.*

(a) A description of the proposed development;

(b) Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams;

(c) A legal description of the property site;

(d) A site development plan showing existing and proposed development locations and existing and proposed land grades;

(e) Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD;

(f) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed; and

(g) Description of the extent to which any watercourse will be altered or related as a result of proposed development.

(2) *Construction stage.* Upon placement of the lowest floor; or floodproofing, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor or floodproofed elevation, as built. The certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular structure the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holders' risk. (The Floodplain Administrator shall review the lowest floor and floodproofing elevation survey data submitted.) The permit holder shall correct deficiencies detected by the review before any further work is allowed to proceed. Failure to submit the survey or failure to make the corrections required hereby, shall be cause to issue a stop-work order for the project.

(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.27 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

(A) The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this chapter. The Administrator is further authorized to render interpretations of this chapter, which are consistent with its spirit and purpose.

(B) Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to:

(1) Review all floodplain development permits to assure that the permit requirements of this chapter have been satisfied;

(2) Inspect and inventory damaged structures in SFHA and complete substantial damage determinations;

(3) Ensure that construction authorization has been granted by the State Department of Natural Resources for all development projects subject to §§ 152.44 and 152.46(A), and maintain a record of the authorization (either copy of actual permit or floodplain analysis/regulatory assessment);

(4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of the permits are to be maintained on file with the floodplain development permit;

(5) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of the notifications to FEMA;

(6) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), copies of DNR permits and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this chapter;

(7) Utilize and enforce all Letters of Map Revision (LOMR) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community;

(8) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished;

(9) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with § 152.26;

(10) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed, in accordance with § 152.26;

(11) Review certified plans and specifications for compliance;

(12) Stop-work orders:

(a) Upon notice from the Floodplain Administrator, work on any building, structure, or premises that is being done contrary to the provisions of this chapter shall immediately cease; and

(b) The notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(13) Revocation of permits:

(a) The Floodplain Administrator may revoke a permit or approval, issued under the provisions of this chapter, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based; and

(b) The Floodplain Administrator may revoke a permit upon determination by the Floodplain Administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this chapter.

(Ord. 2007-04, passed 5-5-2007)

***PROVISIONS FOR FLOOD HAZARD REDUCTION*****§ 152.40 GENERAL STANDARDS.**

(A) *Generally.* In all SPHAs, the following provisions are required.

(B) *Specifically.*

(1) New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.

(4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.

(5) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(9) Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with the provisions of this chapter shall meet the requirements of “new construction” as contained in this chapter.

(10) Any alteration, repair, reconstruction, or improvement to a structure that is not in compliance with the provisions of this chapter, shall be undertaken only if the nonconformity is not further, extended, or replaced.

(Ord. 2007-04, passed 5-5-2007) Penalty, see § 10.99

**§ 152.41 SPECIFIC STANDARDS.**

(A) *Generally.* In all SFHAs, the following provisions are required.

(B) *Specifically.*

(1) *Building protection.* In addition to the requirements of § 152.40, all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:

(a) Construction or placement of any new structure having a floor area greater than 400 square feet;

(b) Structural alterations made to:

1. An existing (previously unaltered structure), the cost of which equals or exceeds 50% of the value of the pre-altered structure (excluding the value of the land); and

2. Any previously altered structure.

(c) Reconstruction or repairs made to a damaged structure that are valued at more than 50% of the market value of the structure (excluding the value of the land) before damaged occurred;

(d) Installing a travel trailer or recreational vehicle on a site for more than 180 days;

(e) Installing a manufactured home on a new site or a new manufactured home on an existing site. This chapter does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and

(f) Reconstruction or repairs made to a repetitive loss structure.

(2) *Residential construction.* New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of division (B)(4) below.

(3) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential structure (or manufactured home) shall have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following.

(a) A registered professional engineer or architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. The certification shall be provided to the official as set forth in § 152.27(B)(10).

(b) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(4) *Elevated structures.* New construction or substantial improvements of elevated structures that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevations shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(a) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(b) The bottom of all openings shall be no higher than one foot above foundation interior grade (which must be equal to in elevation or higher than the exterior foundation grade);

(c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions;

(d) Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator);

(e) The interior portion of the enclosed area shall not be partitioned or finished into separate rooms; and

(f) Portions of the building below the flood protection grade must be constructed with materials resistant to flood damage.

(5) *Structures constructed on fill.* A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following.

(a) The fill shall be placed in layers no greater than one foot deep before compacting to 95% of the maximum density obtainable with the Standard Proctor Test method.

(b) The fill should extend at least ten feet beyond the foundation of the structure before sloping below the FPG.

(c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than three horizontal to one vertical.

(d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.

(e) The top of the lowest floor including basements shall be at or above the FPG.

(6) *Standards for structures constructed with a crawlspace.* A residential or nonresidential structure may be constructed with a crawlspace located below the flood protection grade provided that the following conditions are met.

(a) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(b) Any enclosed area below the flood protection grade shall have openings that equalize hydrostatic pressures by allowing for the automatic entry and exit of floodwaters. Provide a minimum of two openings having a total net area of not less than one square inch for every one square foot of enclosed area. The bottom of the openings shall be no more than one foot above grade.

(c) The interior grade of the crawlspace must be at or above the base flood elevation.

(d) The interior height of the crawlspace measured from the interior grade of the crawlspace to the top of the foundation wall must not exceed four feet at any point.

(e) An adequate drainage system must be installed to remove floodwaters from the interior area of the crawlspace within a reasonable period of time after a flood event.

(f) Portions of the building below the flood protection grade must be constructed with materials resistant to flood damage.

(g) Utility systems within the crawlspace must be elevated above the flood protection grade.

(7) *Standards for manufactured homes and recreational vehicles.* Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements.

(a) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site:

**Spiceland - Land Usage**

1. Outside a manufactured home park or subdivision;
2. In a new manufactured home park or subdivision;
3. In an expansion to an existing manufactured home park or subdivision; or
4. In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood.

(b) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.

(c) Recreational vehicles placed on a site shall either:

1. Be on site for less than 180 days;
  2. Be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
  3. Meet the requirements for “manufactured homes” as stated earlier in this section.
- (Ord. 2007-04, passed 5-5-2007) Penalty, see § 10.99

**§ 152.42 STANDARDS FOR SUBDIVISION PROPOSALS.**

(A) All subdivision proposals shall be consistent with the need to minimize flood damage.

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(D) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty lots or five acres.

(Ord. 2007-04, passed 5-5-2007)

**§ 152.43 CRITICAL FACILITY.**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

(Ord. 2007-04, passed 5-5-2007) Penalty, see § 10.99

**§ 152.44 STANDARDS FOR IDENTIFIED FLOODWAYS.**

(A) Located within SFHAs, established in § 152.07, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the State Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of I.C. 14-28-1 *et seq.*, a permit for construction in a floodway from the State Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing, paving, and the like undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (I.C. 14-28-1-26 allows construction of non-substantial additions/improvements to residences in a non-boundary river floodway without obtaining a permit for construction in a floodway from the State Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval (construction in a floodway permit) for the fill is required from the State Department of Natural Resources.)

(B) No action shall be taken by the Floodplain Administrator until a permit (when applicable) has been issued by the State Department of Natural Resources granting approval for construction in a floodway. Once a permit for construction in a floodway has been issued by the State Department of Natural Resources, the Floodplain Administrator may issue the local floodplain development permit, provided the provisions contained in this subchapter have been met. The floodplain development permit cannot be less restrictive than the permit for construction in a floodway issued by the State Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

(C) No development shall be allowed which acting alone or in combination with existing or future development, will increase the regulatory flood more than fourteen hundredths of one foot.

(D) For all projects involving channel modifications or fill (including levees) the County Planning Commission shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data.

(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.45 STANDARDS FOR IDENTIFIED FRINGE.**

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local floodplain development permit provided the provisions contained in this subchapter have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

(Ord. 2007-04, passed 5-5-2007)

#### **§ 152.46 STANDARDS FOR SFHAS WITHOUT ESTABLISHED BASE FLOOD ELEVATION AND/OR FLOODWAYS/FRINGES.**

(A) *Drainage area upstream of the site is greater than one square mile.*

(1) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the State Department of Natural Resources for review and comment.

(2) No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway or a floodplain analysis/regulatory assessment citing the 100-year flood elevation and the recommended Flood Protection Grade has been received from the State Department of Natural Resources.

(3) Once the Floodplain Administrator has received the proper permit for construction in a floodway or floodplain analysis/regulatory assessment approving the proposed development, a floodplain development permit may be issued provided the conditions of the floodplain development permit are not less restrictive than the conditions received from the State Department of Natural Resources and the provisions contained in this subchapter have been met.

(B) *Drainage area upstream of the site is less than one square mile.*

(1) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodway, fringe, and 100-year flood elevation for the site.

(2) Upon receipt, the Floodplain Administrator may issue the local floodplain development permit, provided the provisions contained in this subchapter have been met.

(C) *Total cumulative effect.* The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood more than fourteen hundredths of one foot and will not increase flood damages or potential flood damages. (Ord. 2007-04, passed 5-5-2007) Penalty, see § 10.99

### ***VARIANCE PROCEDURES***

#### **§ 152.60 DESIGNATION OF VARIANCE AND APPEALS BOARD.**

The Board of Zoning Appeals as established by the County Board of Commissioners shall hear and decide appeals and requests for variances from requirements of this chapter. (Ord. 2007-04, passed 5-5-2007)

#### **§ 152.61 DUTIES OF VARIANCE AND APPEALS BOARD.**

The Board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this chapter. Any person aggrieved by the decision of the Board may appeal the decision to the County Circuit Court, as provided in I.C. 36-7-4-1000 *et seq.* Series-Remedies and Enforcement. (Ord. 2007-04, passed 5-5-2007)

#### **§ 152.62 VARIANCE PROCEDURES.**

In passing upon the applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and;

(A) The danger of life and property due to flooding or erosion damage;

(B) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;

(C) The importance of the services provided by the proposed facility to the community;

(D) The necessity to the facility of a waterfront location, where applicable;

(E) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(F) The compatibility of the proposed use with existing' and anticipated development;

(G) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(H) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(I) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site; and

(J) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(Ord. 2007-04, passed 5-5-2007)

### **§ 152.63 CONDITIONS FOR VARIANCES.**

(A) Variances shall only be issued when there is:

(1) A showing of good and sufficient cause;

(2) A determination that failure to grant the variance would result in exceptional hardship; and

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(B) No variance for a residential use within a floodway subject to § 152.45 or 152.46(A) may be granted.

(C) Any variance granted in a floodway subject to § 152.45 or 152.46(A) will require a permit from the State Department of Natural Resources.

(D) Variances to the provisions for flood hazard reduction of § 152.41 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.

(E) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(F) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the State Register of Historic Sites and Structures.

(G) Any application to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (See § 152.64.)

(H) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the State Department of Natural Resources upon request. (See § 152.64.)  
(Ord. 2007-04, passed 5-5-2007)

**§ 152.64 VARIANCE NOTIFICATION.**

(A) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

(1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and

(2) The construction below the base flood level increases risks to life and property.

(B) The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report the variances issued in the community's biennial report submission to the Federal Emergency Management Agency.  
(Ord. 2007-04, passed 5-5-2007)

**§ 152.65 HISTORIC STRUCTURE.**

Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.  
(Ord. 2007-04, passed 5-5-2007)

**§ 152.66 SPECIAL CONDITIONS.**

Upon the consideration of the factors listed in this subchapter, and the purposes of this chapter, the Board of Zoning Appeals may attach the conditions to the granting of variances as it deems necessary to further the purposes of this chapter.  
(Ord. 2007-04, passed 5-5-2007)

