



Enforcement of your Floodplain Ordinance

Presenter

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What are typical violations?

- Unpermitted development in the floodplain.
- Permitted development in the floodplain that is not following the permit.

Ugly is Not a Violation



Funding with ICC Money Allows 4 Ways to Bring a Structure into Compliance: Called F*R*E*D

- Floodproofing
 - Relocation
 - Elevation
 - Demolition
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F-R-E-D

Floodproofing

- Primarily for Non-Residential Structures
- Crawlspace and Garages can be wet floodproofed


F-R-E-D

Relocation

- Sometimes an option is to move a structure out of the floodplain.
- Sometimes a structure does not need to be moved far to get it out of harms way


F-R-E-E-D

Elevation


- This raises your building to or above the flood elevation level adopted by your community.
 - Sometimes we only need to elevate the utilities or a portion of the structure to bring it into compliance.
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F-R-E-E-D

Demolition

- Removing the building that was built out of compliance.
 - Used more to bring a substantially damaged building into compliance.
 - Yet, it could be the most affordable way to bring a low-cost storage building into compliance.
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Modifications: Not FRED

- Filling in the drainage trough of a manufacturing plant or canning cellar of a home
 - Removing a deck or addition
 - Modifying earthwork to provide better drainage
 - Elevating pipes at river crossings
 - Anchoring sheds or stored products
 - Adding a few feet of freeboard to the berms of a runoff lagoon
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Soft-hand Tactics

- As you can see, many of these are drastic options. It is far better to simply ensure that a structure is built in compliance with your ordinance.
- Before we discuss legal tools to use to enforce compliance, lets discuss soft hand tools to persuade compliance.

Know Your Ordinance

With Knowledge comes Power...

Know your Floodplain Ordinance!

- A violator can sense uncertainty and will try to use that.
- The confidence of knowing the ordinance and what is required will prevent some from trying to get by with something or intimidate you.

Listen and Empathize

The customer is not always right...
but the customer is always the customer.

- Watch your body language
- Listen to them...No Really: Listen!
- Hear their perspective and empathize
 - Empathy does not mean Capitulate

Listen and Empathize

Keep in mind, the goal isn't to get back at a rude constituent, or to teach them a lesson, or to discipline them for their behaviors.

The Goal is Compliance



Example of an Empathy Statement:

"I understand Joyce. I think if I was in your shoes, I might feel the same way. So, what can we do to make this development compliant?"

Empathy for Others

No one WANTS to be the bad guy...

the Villain in the Black Hat.

Use Empathy for the neighbors and others in the community.

Caution: Don't try to use empathy for the community/government.


- This tends to be heard as: you need to do this to make my job easier.

"I understand Frank, and I know you don't need a loan for this or insurance. You want to move forward even though it is a violation of our ordinance. But Frank, if we don't comply with these regulations, we could get kicked out of the NFIP. So, what about your neighbors, the ones who have to have this insurance to keep their home loans. What about that young couple that just bought the Jenkins' place? They need flood insurance for their loan.

And your other neighbors... If we aren't in the NFIP, their property will be worthless. They will never be able to sell because buyers will never be able to get a loan. You don't want to see that.

Our community needs to stay in compliance. What can we do to keep this development compliant Frank?"

WIIFM – What's in it for Me?

- Showing some of the personal advantages to compliance may be persuasive.
 - Possibly show the insurance table and discuss the different costs of insurance.
 - Possibly discuss the potential loss of property of even life.
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Preparing for Legal Action

When Do you start to prepare for legal action?

TODAY!

Right after this class is over!



Call your Legal Counsel

- Explain why it is important for the community to stay in good standing with the NFIP.
- Ask what tools are in place to use if a violation is taking place.
- Ask what the counsel will require in order to take action in court.
- Regardless: Document, Document, Document!

Collecting Evidence

Evidence is usually in the form of Correspondence and Pictures

- Correspondence:
 - Make sure you have a good paper trail
 - Log phone conversations
- Pictures:
 - Don't use your own camera
 - Keep a Log of pictures

Pictures Continued

- Ensure you have an establishing picture
- Ensure the picture adequately shows the violation



Legal Action: Fines

- Established as a fine for a misdemeanor in your ordinance.
 - Each day is a separate offence
 - Main purpose is to get the developer's attention
- This is a misdemeanor, a criminal offence, the fine must be levied by a court.
 - Burdon of Proof rests on the community

Legal Action: Stop Work Order

- Good tool for use when non-permitted development has begun or will begin soon.
 - Can be issued without involving the courts
- You must have the authority granted to you somewhere within the community's statutes to issue such an order.
 - If so, guidelines and restrictions will be spelled out, and must be followed.


Legal Action: Temporary Injunction

- Court order to stop and maintain the status quo until there has been a trial or other court action.
- Like a *Stop Work Order* but requires a hearing.
- Granted based on evidence.
 - Evidence may be by testimony or affidavit
 - Defendant can present evidence also
 - Lasts until a trial on its merits convenes

Legal Action: Temporary Restraining Order

- Like the Temporary Injunction, but without a formal hearing
- Temporary Restraining Order is obtained only from a judge.
 - Evidence submitted through affidavits.
 - Typically issued for limited time until hearing on temporary injunction.

Legal Action: Cease & Desist Order

- Like the above but can be handed down by either an agency or a court.
 - For a specific activity
 - Must be authorized by the ordinance
 - The Agency that issues the order must have authority to do so.
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Withholding an Occupancy Permit or Certification of Compliance

- If you have building codes or zoning regulations, you may have such tools.
- Must be authorized by your jurisdiction's statutes in order to implement

Refusing to Turn on Power and/or Water

- For new structures
- Must be authorized by building code and/or other provisions adopted by local jurisdiction
 - You must also have a solid SOP and/or mutual agreement with the utility companies to implement
- Will not work for additions, earthwork, or other development.
 - You are most likely NOT authorized to turn off existing power

Notice on Title or Deed

- A notice is recorded on the title stating that this structure was not built compliant with the local ordinance
 - It informs any potential future owners of the non-compliant status of the structure
 - Is not a Lien, Does not prohibit the sale of the property.
 - Must be authorized by your jurisdiction's statutes.
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Section 1316

- Used when all other efforts have failed.
- A request to FEMA to deny flood insurance and other services to a property in violation of floodplain regulations.
 - Federal flood insurance won't be available for the structure.
 - Grants, loans, or guarantees made by Federal Agencies will not be available for acquisition of or construction on the structure.
 - No Federal disaster assistance will be available to rebuild the structure.

Nebraska Department of Natural Resources

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Questions?



Future Training Topics:

- **BFE & Map Reading**
 - **Elevation Certificates**
 - **Substantial Damage Assessments**
 - **Violations and Enforcement**
 - **Hazard Mitigation Planning**
 - **LOMR - F**
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