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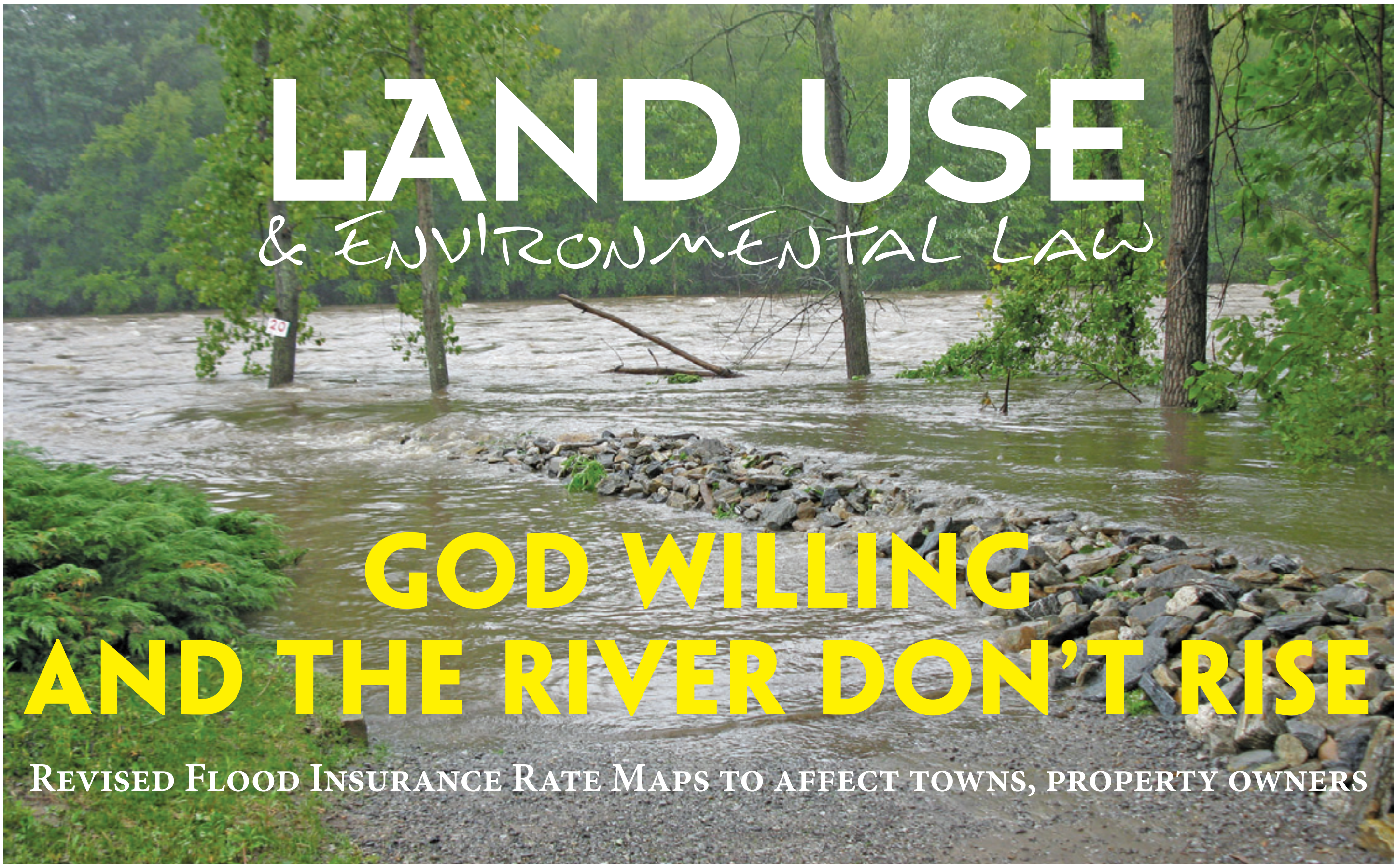

LAND USE & ENVIRONMENTAL LAW

GOD WILLING AND THE RIVER DON'T RISE

Revised Flood Insurance Rate Maps to affect towns, property owners

By CAROLYN J. CAVOLO

Town planners up and down our coast are updating their websites and planning town meetings to address the changes that have come down the pike from our Federal Emergency Management Agency. FEMA administers the National Flood Insurance Program (NFIP) and from time to time, the program publishes Flood Insurance Rate Maps, so-called flood maps.

The new digital maps are based on the NFIP's Flood Insurance Study, which took into consideration factors such as storm tides, erosion, topographic and aerial mapping and coastal hydrologic analysis. The revised maps were adopted by the NFIP after a 90-day appeals period, and will take effect July 8, 2013.

So while the planning and zoning departments of our coastal towns are processing permits for Hurricane Sandy repair work, they are also preparing their citizens for the future.

Carolyn J. Cavolo

Flood Zone Designations

The two most important concepts to grasp in discussing the new Flood Insurance Rate Maps and their effect are Flood Zone designation and Base Flood Elevations, or BFE. Most of us are familiar with flood zones and know, for instance, that our house or place of work may be located in one, whether close to the shore or close to an inland waterway such as a river or a creek. A flood zone is an area that has a one percent chance of being covered by flood waters in any given year. Using this definition is a more accurate way of describing the risk of flooding than relying on the somewhat misleading concept of the "100-year flood."

Flood zone designations are generally denoted as A areas (A, AE, AH, AO, A99 and AR), V areas (VE, V and VO), and X, which includes the older designations of "B" and "C" areas. The A and V zones are considered Special Flood Hazard Areas (SFHA) and X is considered Non-Special Flood Hazard Areas.

SFHA properties are the most flood-prone areas and are the areas for which flood insurance must be required or obtained by a lender pursuant to federal law. Zone X is the most common category of flood zone, denoting a more minimal risk of flooding. Though properties located in non-SFHA areas can and often do experience flooding, flood insurance is not federally mandated for non-SFHA properties.

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A and V zones denote areas in which structures need to be elevated above the one percent flood line. The difference between AE and VE is the "V," which stands for velocity, or wave force. VE will be a zone that is subject to velocity, typically in a tidal area, whereas AE will typically be an inland flood plain not subject to velocity under normal flood conditions.

Base Flood Elevations

The flood zone category of a given parcel determines whether or not flood insurance is required by federal law and/or even available under the National Flood Insurance Program. It also determines, in part, the rate of such insurance. The other crucial variable, and one that is shifting for many property owners with the revised Flood Insurance Rate Maps, is the Base Flood Elevation.

A Base Flood Elevation, or BFE, is a prediction of how high flood waters will rise in a specific area, measured in whole feet from sea level and marked numerically on the maps for that area. BFE are used by town planning agencies to determine how high structures need to be built within the subject area. FEMA requires that, for AE zones, the lowest floor of a structure, including the basement, must be at least one foot above the BFE, and, for VE zones, the lowest supporting horizontal member must be one foot above BFE. Towns may increase that requirement, however, by requiring more than one foot above BFE for construction.

The Base Flood Elevation is also one of the variables that determine the risk and rate of insurance required or available. The more vertical distance you put between the BFE and the structure, the less risk of that structure flooding. Therefore, your insurance rate will be lower the higher you build, or lift, a structure above the subject BFE; conversely, your premium will be higher the lower you are and the closer you get to the BFE. This is noteworthy since, though some areas will have their BFE lowered, more affected areas will have increased BFE requirements, rendering their structures closer to the BFE and, in some cases, non-compliant with the BFE requirements.

Insurance And Zoning Issues

As a result of the updates to the boundaries of the flood zones, some property owners who were not in a Special Flood Hazard Area zone now are, and others who had been in a hazard area zone no longer are. Those owners who have been shifted to a hazard area zone may now have to purchase flood insurance, while property owners moving out of an SFHA and into a non-SFHA may be able to retain their existing flood insurance at a lower premium, known as a "Preferred Risk Policy." Since non-SFHA properties may still experience flooding, the National Flood Insurance Program encourages owners of properties shifted to these zones to retain their flood insurance.

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The revised Flood Insurance Rate Maps also set the stage for a potentially larger impact on owners who are shifted into a Special Flood Hazard Area or whose Base Flood Elevation is increased; in order to stay in compliance with local zoning and flood plain management regulations, they may need to lift their houses if they want to improve them.

Under the National Flood Insurance Program, the concept of Substantial Improvement, sometimes referred to as the "50 percent rule," requires an owner of a non-compliant structure to bring the structure into compliance, typically by lifting it to the requisite height above the BFE if the structure has been "substantially improved." The definition of "Substantial Improvement" is set forth in 44 CFR 59.1: "any reconstruction, rehabilitation, addition or other improvement to a structure, the total cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement." Note the definition uses the market value of the structure alone and not the land on which it sits. (Also note that The Biggert-Waters Flood Insurance Reform and Modernization Act of 2012, signed by President Barack Obama on July 6, 2012, suggests the 50 percent regulation should be reduced to a lower threshold of 30 percent at some point in the future.)

FEMA allows communities to determine the specifics of calculating how the 50 percent threshold is met, so an owner must review their town's regulations carefully. Some towns calculate the improvements cumulatively, going back five, 10 or more years to calculate aggregate improvement costs, whereas others calculate substantial improvement costs on a rolling basis of five years or fewer, with the minimum time period under FEMA regulations being one year of cumulative improvements. The property owners who were or who as of July 8 will be in a Special Flood Hazard Area and whose structure will now be non-compliant with Base Flood Elevation may have the added cost of lifting their homes to consider if they plan renovations in the future.

For property owners rebuilding their homes in the wake of Hurricane Sandy's damage, things may have just gotten a little more complicated. What FEMA and the towns charged with administering the agency's regulations hope, however, is that some short-term pain will pay off in long-term safety, with more and more homes coming into compliance and out of the floodplain. ■

See FEMA's Map Service Center for information on the FIRM updates and information about specific properties at https://msc.fema.gov. Much of the technical information for this article comes from FEMA's National Flood Insurance Program, *website and the informational materials available from their training contractors, H2O Partners, available at www.h2opartnersusa.com. Other resources for property owners can be found at www.floodsmart.gov.*

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