

Londonderry Township Floodplain Ordinance Enforcement

Informational Meeting for Island Stakeholders
(July 2015)

NOTE: This simplified bullet point outline of meeting discussion topics is not intended to be used, and cannot be used, as legal, engineering or technical advice. Please review actual applicable laws, regulations, and ordinances with your professional advisors.

LONDONDERRY TOWNSHIP IS MANDATED TO COMMENCE COMPREHENSIVE ENFORCEMENT OF FLOODPLAIN ORDINANCE REQUIREMENTS

- ▶ FEMA audit of Township has determined that a substantial number of properties are out of compliance.
- ▶ Township is at the beginning of a complex process.
- ▶ Applies to properties in FEMA flood map designated floodplains (“Special Flood Hazard Areas”).
- ▶ Not a matter of Township choice.

Properties in “Floodplains”
are heavily regulated under various
federal, state, and local laws,
regulations, and ordinances.

FEDERAL

(Federal Emergency Management Agency or "FEMA")
(National Flood Insurance Program or "NFIP")
National Flood Insurance Act / Flood Disaster Protection Act

STATE

(Department of Community and Economic Development)
Pennsylvania Flood Plain Management Act of 1978

TOWNSHIP

Floodplain Ordinance Provisions of Zoning Ordinance at
Chapter 27, Part 15 of the Township Code

(Meeting required minimum standards of 44 CFR 60.3 of NFIP
Regs. and also Pa. Flood Plain Management Act)

SOME OF THE POSSIBLE RAMIFICATIONS FOR TOWNSHIP & RESIDENTS IF TOWNSHIP DOES NOT ENFORCE NFIP COMPLIANT ORDINANCE:

- ▶ “SUSPENSION” by FEMA
 - ▶ Flood Insurance No Longer Available for Anyone in Township
 - ▶ No Federal Grants or Loans for buildings in floodplains
 - ▶ No Federal Disaster Assistance in a floodplain
 - ▶ No Federal Mortgage Insurance in a floodplain

REGULATORY “FLOODWAY” PORTIONS OF FLOODPLAINS ARE EVEN MORE STRICTLY REGULATED

- ▶ MANY OF THE TOWNSHIP’S ISLAND PROPERTIES ARE IN FEDERALLY IDENTIFIED FLOODWAY AREAS



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More...

Basemap





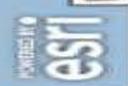
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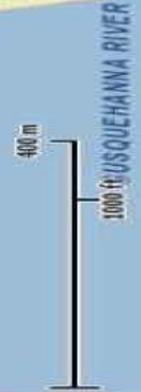
Basemap





More...

Basemap





SUSQUEHANNA RIVER

WHELLEYS ISLAND RD

WHELLEYS ISLAND RD

BEECH ISLAND RD

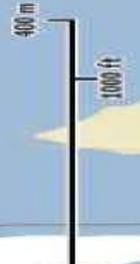
BEECH ISLAND RD

CONSTITUTION DR

RED HILL PL

More...

Basemap



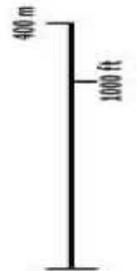
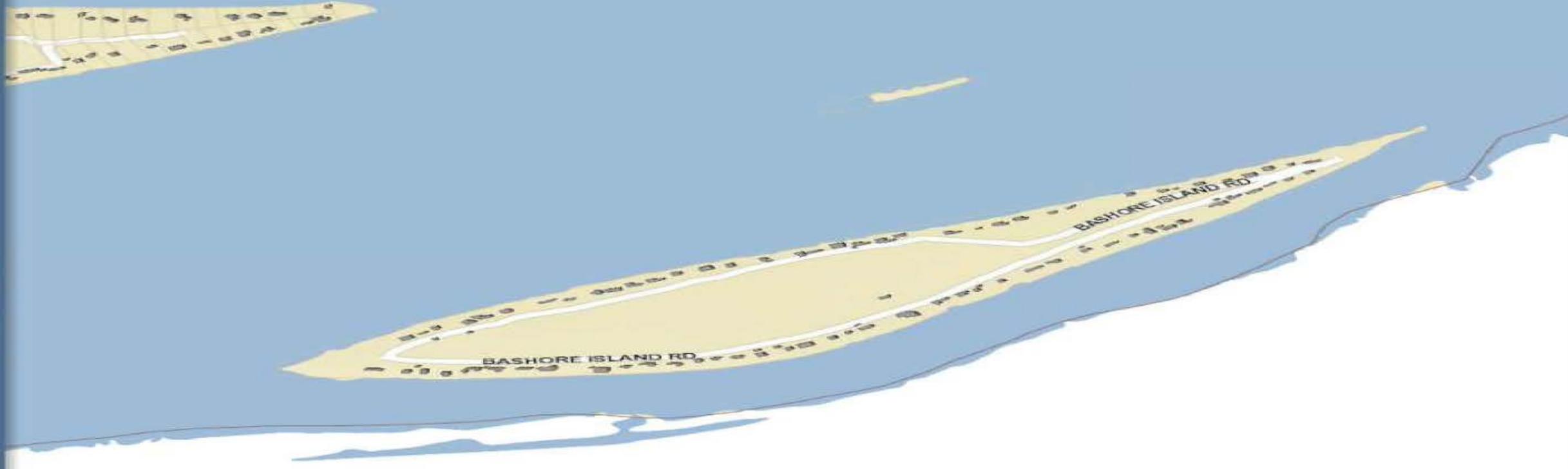
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Move

BaseMap



+

PANEL
043C0442D
eff. 8/2/2012

HOME

-

PANEL
4133C0067E
eff. 9/25/2009

RELOAD

LOMA 11-03-0488A
eff. 1/20/2011

PANEL
42043C0461D
eff. 8/2/2012

PANEL
42133C0086E
eff. 9/25/2009

PANEL
42043C0462D
eff. 8/2/2012

PANEL
42133C0069E
eff. 9/25/2009

PANEL
42071C0088E
eff. 4/19/2005

PANEL
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eff. 9/25/2009

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eff. 8/2/2012

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eff. 8/2/2012

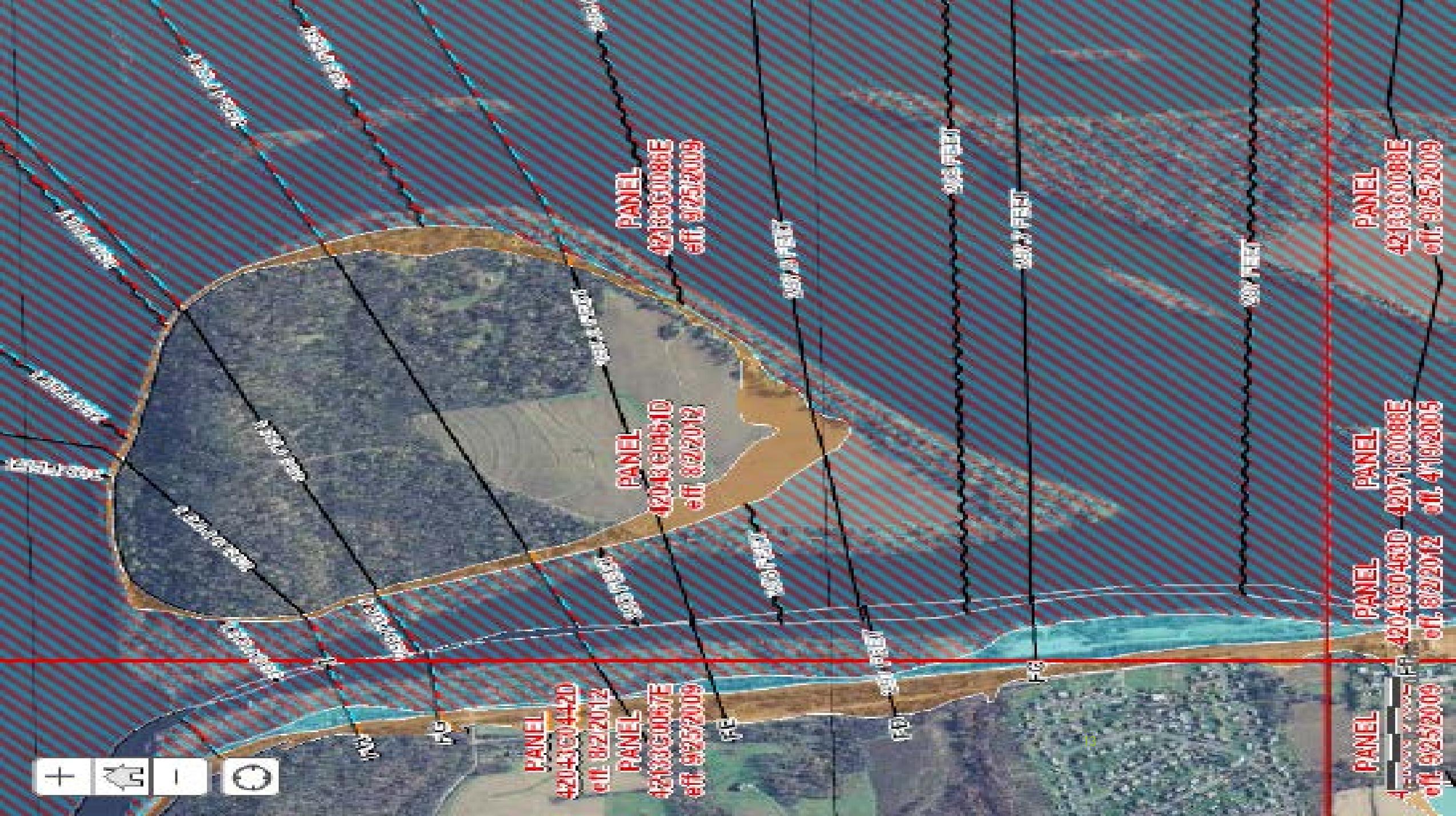
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eff. 9/25/2009

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42133C0201E
eff. 9/25/2009

PANEL
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eff. 4/19/2005

PANEL
42043C0501D
eff. 8/2/2012

PANEL
42133C0202E
eff. 9/25/2009



PANEL
4204960442D
eff. 8/21/2012

PANEL
4213360067E
eff. 9/25/2009

PANEL
4204960461D
eff. 8/21/2012

PANEL
4213360086E
eff. 9/25/2009

PANEL
4204960400D
eff. 8/21/2012

PANEL
4207160088E
eff. 4/16/2005

PANEL
4213360086E
eff. 9/25/2009



Londonderry Twp. Flood Insurance Statistics (Policies and Claims) per FEMA:

Policies in Force:	144
Insurance Coverage in Force:	\$12,901,900.00
No. of Paid Losses	531
<i>Total Losses Paid:</i>	<i>\$11,601,134.33</i>
Substantial Damage Claims Since 1978:	246

LONDONDERRY IS NOW ON THE RADAR SCREEN

- ▶ FEMA has come in and determined that there are significant violations and is requiring the Township to:
 - ▶ Strictly enforce Floodplain Development Permitting process;
 - ▶ Conduct a comprehensive analysis of compliance of Township floodplain properties;
 - ▶ Comprehensively pursue enforcement actions for any violations to bring properties into compliance.

TOWNSHIP SEEKING COOPERATION & VOLUNTARY CORRECTIONS OF VIOLATIONS

- ▶ However, in the absence of voluntary corrective actions, Township will be required by FEMA to pursue enforcement actions against responsible owners/lessees.
- ▶ Potential Remedies set forth in Ordinance (§ 1503.10) include:
 - ▶ Fines (plus payment of Twp. Court Costs & Attorney Fees)
 - ▶ Equity/injunction actions (for correction or removal of unlawful structures/improvements at violator's costs, etc.)
 - ▶ Depending on circumstances, could include requirements to elevate or demolish

POSSIBLE DENIAL OF FLOOD INSURANCE FOR INDIVIDUAL VIOLATORS

Under Section 1316 of the National Flood Insurance Act, flood insurance also can be denied to individual properties that are in violation of state or local floodplain regulations. FEMA may not allow new flood insurance coverage for any property declared in violation of floodplain regulations by the state or local entity in which the violation exists.

OVERVIEW OF IMPORTANT CONCEPTS

TOWNSHIP ORDINANCE MUST MEET MINIMUM FEDERAL STANDARDS SET BY NFIP REGULATIONS, 44 C.F.R. 60.3

and "VARIANCES" ARE EXTREMELY LIMITED IN FLOODPLAINS

- ▶ TOUGHER STANDARDS APPLY FOR GETTING SUCH VARIANCES
- ▶ DISCOURAGED BY FEMA
- ▶ IMPACT FLOOD INSURANCE PREMIUMS

THE FLOODPLAIN ORDINANCE REGULATES NOT ONLY CONSTRUCTION BUT ALSO OTHER BROADLY DEFINED “DEVELOPMENT” IN FLOODPLAINS.

- ▶ Generally includes *“any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets and other paving; utilities; filling, grading and excavation;...storage of equipment or materials.”*
- ▶ Must have a Floodplain Development Permit!

FLOODPLAIN ORDINANCE (PER NFIP STANDARDS) IS COMPREHENSIVE IN WHAT IT REGULATES:

- ▶ Placement of structures
- ▶ Methods of Construction
 - ▶ Note: This is in addition to any applicable Uniform Construction Code general building code requirements
- ▶ Types of structures and alterations to structures (including manufactured homes)
- ▶ Installation of water and sewer utilities, etc.
- ▶ Filling, grading, and excavating
- ▶ Roads and bridges
- ▶ Storage of materials/equipment
- ▶ Recreational vehicle placement
- ▶ Etc.

THE FLOODPLAIN ORDINANCE REQUIREMENTS ARE IN ADDITION TO ALL OTHER GENERALLY APPLICABLE FEDERAL, STATE & LOCAL LAWS, REGULATIONS & ORDINANCES AND PERMIT/LICENSE REQUIREMENTS

E.G.:

- ▶ DEP Sewer System Requirements
- ▶ General Zoning
- ▶ Subdivision & Local Development Ordinance
- ▶ Building Codes
 - ▶ Note: Floodplain regulations even cover structures, like recreational cabins, that are not covered by UCC.
- ▶ Dam Safety and Encroachments Act
- ▶ Pennsylvania Clean Streams Act
- ▶ U.S. Clean Water Act
- ▶ NPDES Permitting
- ▶ Etc.

Am I definitely impacted?

- ▶ Every property is different and has different circumstances.
- ▶ Determined on a “case-by-case” basis.
- ▶ The detailed analysis has not yet been done.

AM I POSSIBLY IMPACTED?

- ▶ Was your property developed/constructed after 3/18/80?
- ▶ Was your structure “substantially improved” after 3/18/80?
- ▶ Was your structure “substantially damaged” after 3/18/80?
- ▶ Did your structure have a “repetitive loss” after 3/18/80?
 - ▶ If any of these apply, then the property is not “grandfathered” to pre-1980 standards, and a deeper analysis will be required.

TRIGGERS TO APPLICABILITY OF UPDATED ORDINANCE STANDARDS FOR STRUCTURE (+ SUPPORTING UTILITIES) INCLUDE:

- ▶ New construction/development
 - ▶ Or Unlawful Improvements Never Permitted
- ▶ “Substantial Improvement” of a Structure (building)
 - ▶ 50% of Market Value at Start of Construction
- ▶ “Substantial Damage” (any cause) to a Structure
 - ▶ Cost to restore (even if not done) is 50% of Market Value
 - ▶ Or “Repetitive Loss”
 - ▶ 2 occasions of FLOOD damage over 10 years where average damage is 25% of Market Value.
- ▶ EVEN IN ABSENCE OF A TRIGGER, ANY NON-SUBSTANTIAL IMPROVEMENTS STILL MUST BE ELEVATED OR FLOODPROOFED TO “THE GREATEST EXTENT POSSIBLE” (Ord. § 1507.2.E).

STRICTER RULES FOR RESIDENTIAL THAN COMMERCIAL BUILDINGS

- ▶ Non-residential may be either elevated or flood-proofed to or above Base Flood Elevation (BFE) + 1 ½ ft.)
- ▶ Residential - Lowest floor must be elevated to/above BFE + 1 ½ ft.

Special Rules for Manufactured Homes (Mobile Homes) (Ord. § 1505.6)

- ▶ No new manufactured homes shall be permitted within any floodplain area.
- ▶ Any existing manufactured home to be replaced or improved within any floodplain area shall be:
 - ▶ Placed on a permanent foundation
 - ▶ Elevated so that the lowest floor of the manufactured home is at least 1 ½ feet above BFE
 - ▶ Anchored to resist flotation, collapse, and lateral movement
 - ▶ Installed in accordance with the manufacturer's instructions

Special (Easier) Rules for Recreational Vehicles (§ 1505.7)

Must:

- ▶ Be on the site for fewer than 120 consecutive days;
- ▶ Be fully licensed and ready for highway use; or
- ▶ Meet the stricter requirements for manufactured homes

Special (Easier) Rules for Recreational Vehicles (§ 1505.7) - *continued...*

To qualify as an R.V. (per § 1509), the vehicle must be:

- ▶ Built on a single chassis.
- ▶ Not more than 400 square feet, measured at the largest horizontal projections.
- ▶ Designed to be self-propelled or permanently towable by a light-duty truck.
- ▶ Not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Note: Cannot have attached additions, decks, etc., and must be street ready (e.g., inflated tires, quick disconnect water and electric, etc.).

ON-LOT SEWER ISSUES

- ▶ Current ordinance prohibits “any on-site sewage system” in any “identified floodplain.” (§ 1505.3.C.1)
 - ▶ Current is more restrictive than FEMA requires.
- ▶ Township to consider amending Ordinance to FEMA minimum by adding:

“ . . . except in strict compliance with all State and local regulations for such systems. If such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.”

ON-LOT SEWER - continued...

WOULD STILL NEED TO MEET:

- ▶ All DEP and other general State & local requirements for on-lot sewer facilities.
 - ▶ Including the Township On-Lot Sewage Disposal System Management Ordinance (“OLSDS”).
- ▶ Flood-specific design requirements of FEMA Publication #348.
 - ▶ Detailed technical requirements primarily aimed at preventing back-up of sewage into buildings; physical damage to system / floatation; and contamination of floodwaters by sewage.
- ▶ Any applicable Uniform Construction Code standards.
- ▶ Etc.

On-Lot Sewer Systems subject to current standards (for now, prohibited) if:

- ▶ New
 - ▶ Or illegally installed without required permitting.
- ▶ Structure that it serves is “Substantially Improved.”
- ▶ Structure that it serves is “Substantially Damaged” (or hits the “Repetitive Loss” Trigger).

DOCKS

- ▶ Docks/launches in floodplains are development subject to floodplain ordinance permitting and restrictions.
- ▶ Again, this is in addition to significant other permitting and compliance requirements under federal, state and local laws, such as:
 - ▶ State dock / launch permitting and restrictions (DEP, Bureau of Waterways Engineering and Wetlands) per Dam Safety and Encroachments Act, 32 P.S. § 693.1 et seq.
 - ▶ If in navigable waterway may require a permit from the U.S. Army Corps of Engineers per Federal Clean Water Act, Rivers and Harbors Act and/or Marine Protection, Research and Sanctuaries Act.
 - ▶ Earthmoving for dock work may implicate Erosion and Sediment Control Plan approval from County Conservation District.
 - ▶ Etc.

2 SEPARATE COMPONENTS TO FEMA REQUIRED ACTION BY TOWNSHIP:

A. PROPERLY ADMINISTER FLOODPLAIN DEVELOPMENT PERMIT PROCESS

- ▶ Expensive
- ▶ Complex/Technical
 - ▶ Requires substantial engineering services

B. ENFORCEMENT ACTIONS TO CORRECT EXISTING VIOLATIONS

- ▶ Professional service to conduct comprehensive analysis of all properties in regulatory floodplain
- ▶ Analysis to include history of claims, historic flooding events, etc.

RESPONSIBILITY FOR ENGINEERING / DESIGN / CERTIFICATIONS

- ▶ Floodplain Development Permitting process requires the applicant to have substantial professional assistance.
 - ▶ Must be provided by the Applicant.
- ▶ In the event of any identified violations, the Township will identify the alleged violations and standards that must be met to comply, but the owner/lessee will be responsible for actual professional engineering, design, legal and other professional assistance.

QUESTIONS?