

Memorandum



To: Planning Commission Members
CC: City Council Members and applicable City Staff
From: Christopher Solberg, AICP - City Planner
Date: 2/12/2010
Re: Amendments to Floodplain Districts

Agenda Item 4B: Public Hearing on amendments to Section 5.18 Zoning Regulations, regarding Floodplain Districts

A public hearing has been scheduled and ordinances have been prepared for the Planning Commission to consider amendments to the Zoning Regulations.

City Engineer John Kottmann has prepared the proposed revisions to the Zoning Regulations based on Papio-Missouri River NRD's recommendation that the ordinance be updated in order to adopt the new Flood Insurance Rate Maps that will become effective May 3, 2010.

The revisions are based on the Nebraska state model ordinance that has been updated to reflect the policies that were included in the new Interlocal Agreement of the Papio Creek Watershed Partnership.

Staff Recommendation Item 4B: Recommend approval of the amendments to Section 5.18 of the Zoning Regulation regarding Floodplain Districts

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Section 5.18**FF/FW Flood Plain Districts (Overlay District)****5.18.01****STATUTORY AUTHORIZATION**

The Legislature of the State of Nebraska has delegated the responsibility to local governmental units to adopt zoning regulations designed to protect the public health, safety and general welfare. The Legislature, in Sections 31-1001 to 31-1022, R.R.S. 1943 (as amended), has further assigned the responsibility to adopt, administer, and enforce floodplain management regulations to the county, city or village with zoning jurisdiction over the flood-prone area. Therefore, the City Council of the City of LaVista, Nebraska, ordains as follows:

5.18.02**FINDINGS OF FACT****5.18.02.01 Flood Losses Resulting From Periodic Inundation**

The flood hazard areas of the City of La Vista, Nebraska, are subject to inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditure for flood protection and relief, and impairment of the tax base all of which adversely affect the public health, safety, and general welfare.

5.18.02.02 General Causes of Flood Losses

Flood Losses are caused by: (1) The cumulative effect of obstruction in floodplains causing increases in flood heights and velocities, and (2) The occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, which are inadequately elevated or otherwise protected from flood damages.

5.18.02.03 Methods Used to Analyze Flood Hazards

These regulations use a reasonable method of analyzing flood hazards which consist of a series of interrelated steps:

1. Selection of a regulatory flood which is based upon engineering calculations which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for these regulations is representative of large floods which are reasonable characteristic of what can be expected to occur on the particular streams subject to these regulations. It is in the general order of a flood which could be expected to have a one percent (1%) chance of occurrence in any one (1) year, as delineated in the official Flood Insurance Study and illustrative materials dated May 3, 2010, and as may be amended.
2. Calculations of water surface profiles based upon a hydraulic engineering analysis of the capacity of the stream channel and over-bank areas to convey the base flood.
3. Computation of the floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.
4. Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any water surface increase along the floodway profile.
5. Delineation of floodway fringe, i.e. that area outside the floodway encroachment lines, but which still is subject to inundation by the base flood.

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5.18.03**STATEMENT OF PURPOSE**

It is the purpose of these regulations to promote the public health, safety, and general welfare and to minimize those losses described in Section 5.18.02.01 by applying the provisions of these regulations for the following purposes.

- 5.18.03.01 Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities.
- 5.18.03.02 Require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction.
- 5.18.03.03 Protect individuals from buying lands which are not suitable for intended purposes because of flood hazards.
- 5.18.03.04 Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance.

5.18.04**LANDS TO WHICH THESE REGULATIONS APPLY**

These regulations shall apply to all lands within the jurisdiction of the City of La Vista, Nebraska, that are subject to a 1% or greater chance of flooding in any given year, now or in the future, as identified as numbered and unnumbered A Zones (including AE, AO and AH Zones) on the effective Flood Insurance Rate Map (effective FIRM) dated May 3, 2010, or best available data as determined by more recent hydrologic and hydraulic studies completed or approved by the Village/City/County or other government agency. Requirements established in Section 4.0 of this ordinance shall apply to the Zoning Districts FW and FF based on the most restrictive information available In all areas covered by these regulations, no development shall be permitted except upon a permit to develop, granted by the City Council or its duly designated representative under such safeguards and restrictions as they may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Sections 5.18.17, 5.18.18, and 5.18.19.

5.18.05**ENFORCEMENT OFFICER**

The Chief Building Inspector is hereby designated as the Enforcement Officer for the City of La Vista, Nebraska, under these regulations.

Deleted: and its extraterritorial zoning jurisdiction identified on the Flood Insurance Rate Maps (FIRM) dated December 2, 2005, as numbered and unnumbered A Zones (including AE, AO and AH Zones) and within the FF/FW Flood Plain Districts (Overlay District) established in Section 5.18.16 of these regulations.

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5.18.06**RULES FOR INTERPRETATION OF DISTRICT BOUNDARIES**

The boundaries of the FF/FW Flood Plain Districts (Overlay District) shall be determined by scaling distances on the official zoning map, the Flood Insurance Rate Map, or the Floodway Map, or on the Digital Flood Insurance Rate Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the Building Inspector shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Adjustment will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the flood fringe overlay district boundary on the land. The location of the floodway overlay district boundary may be based on a map completed or approved by the Village/City/County or other government agency, provided the boundary is not less restrictive than that shown on the effective FIRM. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his/her case to the Board of Adjustment and to submit his/her own technical evidence, if he/she so desires.

5.18.07**COMPLIANCE**

No development located within identified special flood hazard areas of the community shall be located, extended, converted or structurally altered without full compliance with the terms of these regulations and other applicable regulations.

5.18.08 ABROGATION AND GREATER RESTRICTIONS

It is not intended by this ordinance to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where these regulations impose greater restrictions, the provisions of these regulations shall prevail. All other ordinances inconsistent with these regulations are hereby repealed to the extent of the inconsistency only.

5.18.09 INTERPRETATION

In their interpretation and application, the provisions of these regulations shall be held to minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by State Statute.

5.18.10 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. These regulations do not imply that areas outside the boundaries of the FF/FW Flood Plain Districts or land uses permitted within such districts will be free from flooding or flood damages. These regulations shall not create liability on the part of the City of La Vista, Nebraska, of any officer or employee thereof for any flood damages that may result from reliance on these regulations or any administrative decision lawfully made thereunder.

5.18.11 SEVERABILITY

If any section, clause, provision or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

5.18.12 APPLICATION FOR APPEAL

Where a request for a permit to develop is denied by the Chief Building Official, the applicant may apply for such permit or variance directly to the Board of Adjustment. The Board of Adjustment may grant or deny such request in accordance with the provisions of the Zoning Ordinance governing the Board of Adjustment.

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5.18.13 PERMITS REQUIRED

No person, firm or corporation shall initiate any floodplain development or substantial improvement or cause the same to be done without first obtaining a separate permit for development as defined by these regulations.

5.18.14 ADMINISTRATION

The Chief Building Official is hereby appointed to administer and implement the provisions of these regulations. The duties of the Chief Building Official shall include, but not be limited to the following:

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5.18.14.01 Review all development permit applications to assure that sites are reasonably safe from flooding and that the permit requirements of these regulations have been satisfied.

5.18.14.02 Review applications for proposed development to assure that all necessary floodplain permits have been obtained from those Federal, state or local governmental agencies from which prior approval is required.

5.18.14.03 Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding.

5.18.14.04 Notify adjacent communities, the Papio-Missouri River NRD, the U.S. Army Corps of Engineers, Sarpy County, and the Nebraska Department of Natural Resources, Flood Plain Management Section, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

5.18.14.05 Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5.18.14.06 Verify, record and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures in special flood hazard areas.

5.18.14.07 Verify, record and maintain record of the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood-proofed.

5.18.14.08 When flood-proofing is utilized for a particular structure, the Chief Building Official shall be presented certification from a registered professional engineer or architect.

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5.18.14.09 Facilitate the approval of new Flood Insurance Rate Maps or best available data as necessary.

5.18.14.10 Maintain records of all floodplain development permits and or building permits within the floodway or flood fringe overlay district to ensure that structures are not substantial improvements.

5.18.14.11 Filling of the floodway fringe associated with new development within the Papillion Creek System shall be limited to 25% of the floodway fringe in the floodplain development application project area, unless approved mitigation measures are implemented. The remaining 75% of floodway fringe within the project area shall be designated as a restricted fill zone. For redevelopment, these provisions may be modified or waived in whole or in part by the local jurisdiction

5.18.15 APPLICATION FOR A PERMIT

To obtain a floodplain development permit, the applicant shall first file an application, in writing, on a form furnished for that purpose. Every such application shall:

- 5.18.15.01 Identify and describe the development to be covered by the floodplain development permit.
- 5.18.15.02 Describe the land on which the proposed development is to be done by lot, block, tract, and house and street address, or similar description that will readily identify and definitely locate the proposed building or work.
- 5.18.15.03 Indicate the use or occupancy for which the proposed development is intended.
- 5.18.15.04 Be accompanied by plans and specifications for proposed construction including but not limited to the following information: 1) existing (natural) grades. 2) proposed grades as a result of proposed development. 3) the proposed lowest floor elevation and any higher floor elevations, including attached garage, of any proposed structures. 4) the lowest and highest adjacent grades next to any proposed structures. 5) the most restrictive base flood elevation nearest the proposed development.
- 5.18.15.05 Be signed by the permittee or his authorized agent who may be required to submit documentation to indicate such authority.
- 5.18.15.06 Comments from the Papio-Missouri River Natural Resources District shall accompany each application for a flood plain development permit.
- 5.18.15.07 Give such other information as may be reasonably required by the Chief Building Official. **Deleted:** Building Inspector

5.18.16 ESTABLISHMENT OF ZONING DISTRICTS

Along watercourses where a floodway has been established, the mapped floodplain areas are hereby divided into the two following districts: A floodway overlay district (FW) and a flood fringe overlay district (FF) as identified in the Flood Insurance Study. effective FIRM, or best available data. The zoning districts created by this resolution overlie other zoning districts and place additional restrictions upon the manner in which lands in such underlying district may be used. Within these districts all uses not meeting the standards of these regulations and those standards of the underlying zoning district shall be prohibited.

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5.18.17 STANDARDS FOR FLOODPLAIN DEVELOPMENT

- 5.18.17.01 No permit for development shall be granted for new construction, substantial improvements and other development, including the placement of manufactured homes within all numbered and unnumbered A Zones (including AE, AO, and AH Zones) unless the conditions of this section are satisfied.
- 5.18.17.02 All areas identified as unnumbered A Zones on the effective FIRM or best available data are subject to inundation of the base flood; however, the water surface elevation was not provided. The unnumbered A Zones shall be subject to all development provisions of these regulations. If Flood Insurance Study data is not available, the City of La Vista shall utilize any base flood elevation or floodway data currently available from Federal, state or other sources.

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5.18.17.03 Until a floodway has been designated, no development or substantial improvement may be permitted within special flood hazard area unless the applicant has demonstrated that the proposed development or substantial improvement, when combined with all other existing and reasonably anticipated developments or substantial improvements, will not increase the water surface elevation of the base flood more than one (1) foot at any location as shown on the effective FIRM or best available data.

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5.18.17.04 New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:

1. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamics and hydrostatic loads, including the effects of buoyancy.
2. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
3. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
4. All electrical equipment and sanitary facilities, including circuits, installed electric appliances, toilets, sinks, drains, in new developments and substantial improvements shall be located so as to not be subject to flooding or shall be floodproofed to prevent damage resulting from flood levels exceeding the base flood elevation by one foot. Backflow valves should be installed on all septic lines leading from the structure.
5. The storage of material and equipment shall be regulated as follows:
 - (a) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited.
 - (b) Storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning.
6. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, be required to assure that:
 - (a) All such proposals are consistent with the need to minimize flood damage;
 - (b) All public utilities and facilities, such as sewer, gas, electrical, and water systems, are located, elevated and constructed to minimize or eliminate flood damage;
 - (c) Adequate drainage is provided so as to reduce exposure to flood hazards; and
 - (d) Proposals for development of five (5) acres or fifty (50) lots, whichever is lesser, include within such proposal the base flood elevation.

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5.18.18 FLOOD FRINGE OVERLAY DISTRICT (INCLUDING AO AND AH ZONES)

5.18.18.01 Permitted Uses

Any use permitted in Section 5.18.19 shall be permitted in the Flood Fringe Overlay District. No use shall be permitted in the district unless the standards of Section 5.18.17 are met.

5.18.18.02 Standards for the Flood Fringe Overlay District

1. Require that new construction or substantial improvements of residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the highest base flood elevation available, now or in the future.
2. Require new construction or substantial improvements of non-residential structures to have the lowest floor, including basement, elevated to or above one (1) foot above the highest base flood elevation available, now or in the future, or, together with attendant utility and sanitary facilities, to be flood-proofed so that below that level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Chief Building Officials as set forth in Section 5.18.14.07.

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Require for all new construction and substantial improvements that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage. The area below lowest floor subject to flooding shall be a maximum of four (4) feet in height measured from the bottom of the floor joists, unless used for parking of vehicles. Areas other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: 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 shall be provided. The bottom of all openings shall be not higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. 4. All electrical equipment and sanitary facilities, including circuits, installed electric appliances, toilets, sinks, drains, in new developments and substantial improvements shall be located so as to not be subject to flooding or shall be floodproofed to prevent damage resulting from flood levels exceeding the highest base flood elevation available, now or in the future, by one foot. Backflow valves should be installed on all septic lines leading from the structure.

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3. Within AH Zones adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

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4. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with local building codes or FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:

- (a) Over-the-top ties be provided at each of the four (4) corners of the manufactured home with two (2) additional ties per side at intermediate locations. Manufactured homes less than fifty (50) feet long require one (1) additional tie per side.
- (b) Frame ties be provided at each corner of the home with five (5) additional ties per side at intermediate points. Manufactured homes less than fifty (50) feet long require four (4) additional ties per side.
- (c) All components of the anchoring system be capable of carrying a force of forty-eight hundred (4800) pounds.
- (d) Any additions to manufactured homes be similarly anchored.

6. All manufactured homes to be placed or substantially improved within special flood hazard areas on the FIRM on sites outside of a manufactured home park or subdivision, or in a new manufactured home park or subdivision, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above one (1) foot above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 5.18.18.02 (5) above.

7. Recreational vehicles placed on sites within the special flood hazard areas on the community's official map shall either (i) be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use, or (ii) meet the permit requirements and the elevation and anchoring requirements for "manufactured homes" of this ordinance. A recreational vehicle is ready for highway use if it is 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.

8. Located within the areas of special flood hazard established in Section 5.18.04 are areas designated as AO Zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply within AO Zones:

- (a) All new construction and substantial improvements of residential structures shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the FIRM (at least two (2) feet if no depth number is specified).
- (b) All new construction and substantial improvements of non-residential structures shall (i) have the lowest floor elevated above the highest adjacent grade at least as high as one (1) foot above the depth number specified in feet on the FIRM (at least two (2) feet if no depth number is specified), or (ii) together with attendant utility and sanitary facilities be completely flood-proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Such

certification shall be provided to the Building Inspector as set forth in Section 5.18.14.07.

(c) Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

5.18.19 FLOODWAY OVERLAY DISTRICT

5.18.19.01 Permitted Uses

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the Floodway District to the extent that they are not prohibited by any other ordinance and provided they do not require structures, fill, or storage of materials or equipment. The following are permitted uses for the Floodway District:

1. Open space uses not requiring a closed building, such as agricultural cropland, livestock feeding and grazing, or open public and private recreation areas.
2. Wire fences or other appurtenances may be constructed which would not constitute an obstruction or debris-catching obstacle to the passage of flood waters.
3. Railroads, streets, bridges, public utility wire and pipelines for transmission and local distribution.
4. Commercial excavation of materials from pits, strips, or pools; provided, that no stockpiling of materials, products or overburden shall be such as to create a potential restriction to the passage of flood waters.
5. Non-restrictive improvements in stream channel alignment, cross section, and capacity in the normal maintenance thereof

6. Uses of a type not appreciably damaged by flood waters; provided, no structures for human habitation shall be permitted.

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<#=Residential uses such as lawns, gardens, parking and play areas.¶

<#=Nonresidential uses such as loading areas, parking, and airport landing strips.¶

<#=Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, and wildlife and nature preserves.¶

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5.18.19.02 Standards for the Floodway Overlay District

The uses enumerated in 5.18.19.01 above shall only be permitted if certification by a registered professional engineer or architect is provided demonstrating that the development shall not result in any increase in water surface elevations along the floodway profile during occurrence of the base flood discharge. These uses are subject to the standards of Sections 5.18.17 and 5.18.18. In Zone A unnumbered, obtain, review and reasonably utilize any flood elevation and floodway data available through Federal, state or other sources or Section 5.18.17.04 (6)(d) of these regulations, in meeting the standards of this section

5.18.20 VARIANCE PROCEDURES

5.18.20.01 The Board of Adjustment as established by the City of La Vista, Nebraska, shall hear and decide appeals and requests for variances from the requirements of these regulations.

5.18.20.02 The Board of Adjustment shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Chief Building Official in the enforcement or administration of these regulations.

5.18.20.03 Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the District Court of Sarpy County as provided in Section 19-912, R.R.S. Nebraska 1943.

5.18.20.04 In passing upon such applications, the Board of Adjustment shall consider all technical evaluation, all relevant factors, standards specified in other sections of these regulations, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
6. The compatibility of the proposed use with existing and anticipated development;
7. The relationship of the proposed use to the Comprehensive Plan and Flood Plain Management Program for that area;
8. The safety of access to the property in times of flood for ordinary and emergency vehicles;
9. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site; and
10. 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, water systems, and streets and bridges.

5.18.21 CONDITIONS FOR VARIANCES

5.18.21.01 Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (1/2) acre or less in size if contiguous to or surrounded by lots with existing structures constructed below the base flood level, providing the requirements of Sections 5.18.21.02 through 5.18.21.05 below have been fully considered. As the lot size increases beyond one-half (1/2) acre, the technical justification required for issuing the variance increases.

5.18.21.02 Variances shall not be issued within any designated floodway if any increase in flood levels along the floodway profile during the base flood discharge would result.

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

5.18.21.04 Variances shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; 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 on or victimization of the public, or conflict with existing local laws or ordinances.

5.18.21.05 Any applicant to whom a variance is granted shall be given a written notice from the Building Inspector that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one-hundred dollars (\$100) of insurance coverage, and that such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by these regulations.

5.18.22 NONCONFORMING USE

5.18.22.01 A structure or the use of a structure or premises which was lawful before the passage or amendment of flood plain regulations, but which is not in conformity with the provisions of these regulations may be continued subject to the following conditions:

No such structure or use shall be expanded, changed, enlarged or altered in a way which increases its nonconformity.

If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this ordinance.

4. Uses or adjuncts thereof, which are or become nuisances, shall not be entitled to continue as nonconforming uses.

5.18.22.02 If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty percent (50%) of the market value of the structure before the damage occurred except that if it is reconstructed in conformity with the provisions of these regulations. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations.

5.18.23 PENALTIES FOR VIOLATION

Violation of the provisions of these regulations or failure to comply with any of its requirements, including violations of conditions and safeguards established in connection with grants of variances, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof, be fined not more than five hundred dollars (\$500), and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense.

Nothing herein contained shall prevent the City of La Vista, Nebraska, or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

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5.18.24 AMENDMENTS

The regulations, restrictions, and boundaries set forth in these regulations may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action shall be taken until after a public hearing in relation thereto, at which interested parties and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of La Vista, Nebraska. At least ten (10) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this ordinance are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulations and the 1983 Nebraska Flood Plain Management Act.

5.18.25 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the same meaning as they have in common usage and so as to give this ordinance its most reasonable application.

“Appeal” – A request for a review of the Chief Building Official’s interpretation of any provision of this ordinance or a request for a variance.

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“Area of Shallow Flooding” – A designated AO or AH Zone on a Flood Insurance Rate Map (FIRM) with a one percent (1%) or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

“Area of Special Flood Hazard” – The land in the flood plain within a community subject to one percent (1%) or greater chance of flooding in any given year.

“Base Flood” – The flood having one percent (1%) chance of being equaled or exceeded in any given year.

“Basement” – Any area of the building having its floor subgrade (below ground level) on all sides.

“Best Available Data” means any hydrologic and hydraulic studies which result in a base flood elevation, now or in the future, that is higher than that shown on the Effective FIRM or Effective FIS. Such study must be completed or approved by the Village/City/County or other government agency.

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“Development” – Any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Existing Construction” (for the purpose of determining rates) – Structures for which the start of construction commenced before the effective date of the FIRM or before January 1, 1975, for FIRM’s effective before that date. “Existing Construction” may also be referred to as “existing structures.”

“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 complete before the effective date of the floodplain management regulations adopted by a community.

"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 wither final site grading or the pouring of concrete pads.)

"Flood or Flooding" – A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland waters; or
- (2) the unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Fringe" – That area of the floodplain, outside of the floodway, that on the average is likely to be flooded once every one-hundred (100) years, i.e. that has a one percent (1%) chance of flood occurrence in any one year.

"Flood Insurance Rate Map (FIRM)" or "Effective FIRM" – An official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and the zones establishing insurance rates applicable to the community.

"Flood Insurance Study (FIS)" or "Effective FIS" – The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

"Floodplain" – Any land area susceptible to being inundated by water from any source (see definition of "flooding".)

"Floodway" or "Regulatory Floodway" – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Freeboard" – A factor of safety usually expressed in feet above a flood level for purposes of flood plain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.

"Highest Adjacent Grade" – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Lowest Floor" – The lowest floor of the lowest enclosed area (including basement.) An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"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.

"New Construction" – For floodplain management purposes, "new construction" means structures for which the "start of construction commenced on or after the effective date of the floodplain

management regulation adopted by a community and includes any subsequent improvements to such structures.

"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 floodplain management regulations adopted by a community.

"Overlay District" – A district in which additional requirements act in conjunction with the underlying zoning district(s). The original zoning district designation does not change.

"Principally Above Ground" – At least fifty-one percent (51%) of the actual cash value of the structure is above ground.

"Recreational Vehicle" – A vehicle which is (1) built on a single chassis; (2) four hundred (400) square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently tow-able by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Special Flood Hazard Area" – The land in the floodplain within a community subject to one percent (1%) or greater chance of flooding in any given year.

"Start of Construction" (for other than new construction or substantial improvements under the coastal Barrier Resources Act, Pub. L. 97-348) – Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one-hundred and eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the 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, or 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 a 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 the alteration affects the external dimensions of the building.

"Structure" – A walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

"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 fifty percent (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 fifty percent (50%) of the market value of the structure before "start of construction" of the improvement. This includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or

(2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Variances" – A grant of relief to a person from the requirements of this ordinance which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

"Violation" – A failure of a structure or other development to be fully compliant with the community's floodplain management regulations.