

A REPORT UPON THE
PROPOSED FLOOD PLAIN ORDINANCE FOR
MARICOPA COUNTY

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A REPORT UPON THE
PROPOSED FLOOD PLAIN ORDINANCE
FOR MARICOPA COUNTY

BY
THE MARICOPA COUNTY PLANNING AND
ZONING DEPARTMENT

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I. INTRODUCTION

The increase in flood damage potential in Maricopa County is a serious problem for private individuals and public officials. The greater density of land occupancy brought about by the increasing population in Maricopa County makes it impractical to deal with the underlying factors of flood prevention solely through the erection of traditional flood control structures. Prevention through regulation of land subject to overflow by floods is also required. This is even more apparent when it is realized that the inherent advantages in the flat areas subject to flooding make these areas conducive to development, despite the great disadvantages of the flood hazard.

The Maricopa County Planning and Zoning Department has recently prepared a proposed flood plain ordinance for Maricopa County. The Flood Control District of Maricopa County proposed flood plain regulations for Maricopa County in 1962. This report discusses major provisions in the proposed flood plain ordinance prepared by the Maricopa County Planning and Zoning Department and differences in this ordinance with the flood plain regulations proposed by the Flood Control District of Maricopa County. Its purpose is to familiarize the reader with the principles of flood plain regulations and to give an indication as to how individual properties subject to overflow by floods may be affected by flood plain regulations.

II. PRINCIPLES OF FLOOD PLAIN REGULATIONS

Flood plain regulations are a means to regulate land subject to flooding by placing it in separate districts with certain restrictive provisions so that flood damage can be minimized. Secondary benefits accrue through the consequent protection of the public health and general welfare, but the main purpose is to reduce flood damage. The authority to establish flood plain regulations, which carries with it police powers for their enforcement, rests initially with the state. Flood plain regulations to meet the legality test should accomplish the following:

- 1) Flood plain regulations should be comprehensive in scope. Their application should not be limited to just small selected areas of the flood plain, for to do so would be discriminatory.
- 2) Their stated purpose should be realized by compliance. For example, if the regulations state that property damage will be prevented and the health of the people will be safeguarded, then the regulations must be such to accomplish these ends.
- 3) Flood plain regulations should be documented with factual data from flood experience and, if necessary, an engineering study of possible future flood tendencies.
- 4) The provisions of the flood plain regulations should be reasonable. If such regulations are based upon sound engineering studies and data, and upon comprehensive planning, they should stand the test of reasonableness. Regulations which unduly prohibit development in a flood area may be tantamount to confiscation of property and may be illegal.

III. PROPOSED FLOOD PLAIN ORDINANCE

The proposed flood plain ordinance would include a text and flood plain district maps for Maricopa County. The text may be divided into three basic divisions. Articles concerning the enactment and interpretation of the ordinance compose the first basic division. The second basic division concerns the articles containing the use regulations for each of the flood plain districts. The third division concerns the administrative articles of the ordinance, dealing with such matters as enforcement, the issuing of permits, certificates of occupancy, and providing for appeals and amendments. The flood plain district maps are the means by which the flood plain districts have been outlined and their boundaries fixed.

Definitions

The functions of definitions are to aid in the interpretation of the provisions of the flood plain ordinance, to clarify sections that might otherwise be obscure, and to eliminate wordiness. The definitions of the proposed flood plain ordinance would include only those terms to further these functions, and terms which have meanings peculiar to the application of regulations in the proposed flood plain ordinance.

Establishment of Districts and Boundaries Thereof

This article of the proposed flood plain ordinance would establish three flood plain districts in Maricopa County. The F-1 district would be established in areas where it is desirable for the use of flood plains

to be harmonious with adjacent properties used for either residential or rural purposes. The F-2 district would be established on flood plains adjacent to commercial properties, and the F-3 district would be established on flood plains adjacent to industrial properties. The establishment of these districts would give reasonable consideration to the character of any existing zoning district and to the nature of present land uses.

The flood plain ordinance proposed by the Flood Control District would not establish flood plain districts; however, areas of land reasonably required to discharge flood waters would be established as primary floodways.

Use Regulations

The use regulations of the proposed flood plain ordinance would permit the use of land in areas subject to overflow by floods. However, the permitted uses under proper conditions would not suffer major damage in time of floods; nor would these uses cause an excessive rise in the level of flood waters thus causing damage that would not otherwise occur.

The uses permitted in the F-1 district would include agricultural uses; railroads, streets and bridges; public parks and playgrounds and outdoor public parks; recreational camps, camp grounds, and camp trailer parks; and other customary accessory uses. The uses permitted in the F-2 district would include the uses permitted in the F-1 district; archery ranges, drive-in theaters, miniature golf courses and golf driving ranges; circuses, carnivals and other similar transient amusement enterprises;

loading and unloading areas, parking lots and used car lots; and customary accessory uses. The uses permitted in the F-3 district would include agricultural uses; railroads, streets and bridges; circuses, carnivals and other similar transient amusement enterprises; loading and unloading areas, parking lots and used car lots; storage yards; extraction of natural materials; and customary accessory uses.

The flood plain ordinance proposed by the Flood Control District would not include specific use regulations. The use of land in areas established as primary floodways would be permitted if such use does not restrict the flood carrying capacity of the floodway, cause an excessive rise in the level of flood waters, divert the flow of flood waters, or otherwise affect adversely the maintenance, improvement or control of the primary floodways.

Non-Conforming Uses

The proposed flood plain ordinance, on non-conforming uses, would allow any use of land, building, or structure lawfully existing at the time it becomes effective to continue even if the use does not conform with the use regulations for the flood plain district in which it is located. The continuance of a non-conforming use, however, would be prohibited if discontinued for a period of 12 consecutive months or if destroyed by fire, flood, explosion, act of God, or act of the public enemy to the extent of 75% of its appraised value. Enlargement, extension, reconstruction or structural alterations of non-conforming uses would be required to conform with the use regulations of the proposed flood plain

ordinance for the flood plain district in which such property is located. If no structural alterations are made, it would be permissible to change a non-conforming use to another non-conforming use provided the proposed use is equally appropriate or more appropriate to the flood plain district than the existing non-conforming use.

Administration and Enforcement

The Chief Engineer of the Flood Control District would be the responsible official for enforcing the proposed flood plain ordinance. In performing duties to enforce the proposed flood plain ordinance, the Chief Engineer would receive and review applications for, and issue building permits; make inspections and issue certificates of occupancy for completed buildings; make periodic inspection for violations; and keep adequate records of all activities.

The proposed flood plain ordinance would require that no one may erect, add to, or alter a building or structure without first obtaining a building permit from the Chief Engineer and for that purpose, the applicant would be required to furnish the Chief Engineer with drawings of proposed work, drawn to scale, and a plot plan drawn to scale with all dimensions figured, showing accurately the size and exact location of all proposed new construction, and of all existing buildings and structures. The Chief Engineer could subject permit approval to such conditions necessary to carry out the purpose of the proposed flood plain ordinance including, but not limited to, the following: 1) buildings and structures for human habitation shall not be permitted; 2) buildings and structures shall be of a type not appreciably damaged by flood waters; 3) buildings

and structures and their designated use shall be in harmony with and not detrimental to adjacent property or the permitted use thereof;

4) buildings and structures shall be designed, constructed and placed on the lot so as to offer the minimum obstruction to and effect upon the flow of water; and, 5) any building or structure shall be firmly anchored to prevent it from floating away in time of flood and thus damaging other structures and threatening to restrict bridge openings and other restricted sections of the stream.

Before a building or land is occupied for use, the proposed flood plain ordinance would require a certificate of occupancy be issued by the Chief Engineer. The purpose of this certificate is to assure that the proposed use would comply with all the regulations of the proposed flood plain ordinance. The certificate of occupancy would not be issued if such is not the case. The Chief Engineer could subject certificate approval to such conditions necessary to carry out the purpose of the proposed flood plain ordinance including, but not limited to, the following: 1) any use shall be in harmony with and not detrimental to adjacent property or the permitted use thereof; 2) the filling or excavation of land shall be finished so as to offer the minimum obstruction to and effect upon the flow of water; and, 3) equipment or material stored on any property shall be firmly anchored to prevent it from floating away in time of flood and thus damaging other property and threatening to restrict bridge openings and other restricted sections of the stream.

The flood plain ordinance proposed by the Flood Control District would require that permit applications for the use of land in areas established as primary floodways be filed with the Maricopa County Planning and Zoning Department. The Planning and Zoning Department would then forward these applications to the Chief Engineer of the Flood Control District for review and recommendation. The Planning and Zoning Department would issue permits upon receipt of a favorable recommendation from the Chief Engineer. The Planning and Zoning Department would not be permitted to issue a permit should the Chief Engineer's recommendations be unfavorable towards the proposed use indicated on the permit application.

Appeals

Since a strict application of the regulations in the proposed flood plain ordinance may on occasions cause undue hardship to certain property owners, legal machinery of some kind, in addition to the courts, is necessary to grant these property owners relief. Since the Chief Engineer would have no discretion in matters of this kind, the proposed flood plain ordinance would provide that appeals to the Board of Directors of the Flood Control District may be made by persons aggrieved or affected by any decision of the Chief Engineer concerning interpretation or administration of the ordinance. The Board of Directors upon receiving such appeals would be required to hold public hearing thereon after giving at least 10 days public notice thereon as well as notice to parties in interest, and decide upon the same within a reasonable time.

The flood plain ordinance proposed by the Flood Control District would include provisions to appeal any decision of the Chief Engineer concerning interpretation or administration. However, these appeals would be filed with the Board of Adjustment and Appeals having jurisdiction. The Board of Adjustment and Appeals having jurisdiction would be one of the three boards established for each of the supervisorial districts of Maricopa County as created by the present zoning ordinance for the unincorporated area of Maricopa County.

Amendments

The proposed flood plain ordinance would authorize the Board of Directors of the Flood Control District to make amendments in the flood plain regulations and in the boundaries of the flood plain districts. These amendments could be initiated either by said Board of Directors or by the Advisory Board of the Flood Control District on their own motion. Amendments could not occur without a public notice and public hearing. The procedures for public notice and public hearing would be included in the proposed flood plain ordinance.

Violation and Penalty

Violation or failure to comply with any of the requirements of the proposed flood plain ordinance would be a misdemeanor, punishable by fine or imprisonment or both.

Seperability Clause and Conflicting Ordinances

The proposed flood plain ordinance would include the separability clause to insure that if one portion of the ordinance is found unconstitutional or invalid, the remaining portion would continue in effect.

Should any regulation of the proposed flood plain ordinance and other regulations of any other ordinance impose overlapping or conflicting regulations over the use of land and buildings in areas subject to the regulations of the proposed flood plain ordinance, then that regulation which is more restrictive would apply.

IV. CONCLUSION

Prevention of flood damage requires a broad program carried out over a period of years. It involves the use of a variety of measures designed to prevent the more intensive use of areas subject to flooding and to help reduce both present and possible future flood damage potential. If consistently applied, such a program would result in substantial savings to the citizens of Maricopa County since future floods would have only a very limited effect upon the area. Such a program should include the adoption of the proposed flood plain ordinance which contains provisions for guiding future development in areas subject to overflow by floods. The adoption of the proposed flood plain ordinance would be a logical extension of the comprehensive flood control program currently administered by the Flood Control District of Maricopa County.

The U. S. Army Corps of Engineers is preparing a series of reports to provide information about flood hazards in the flood plains along several streams in Maricopa County. These reports, completed for Indian Bend Wash, Cave Creek, Skunk Creek, the Wickenburg Area and New River, are the basis for determining the location of proposed flood plain districts which would be expanded to other areas subject to flooding upon the completion of similar studies by the U. S. Army Corps of Engineers for several other streams in Maricopa County.