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DANE COUNTY TO PROPOSE ORDINANCE RECREATING FLOODPLAIN ORDINANCE

The DCTA will carefully monitor proposals update the County’s floodplain ordinance, Ch. 17 of the Code. If the proposal does no more than follow the mandated elements of Wisconsin law, there is neither reason nor opportunity to object to the change. However, the DCTA and towns should oppose any attempt to use the update as a way to adopt provisions more restrictive than mandated.

BACKGROUND

Under 1973 legislation, the federal government adopted and enforces flood protection regulations applicable to all states. Those regulations make federal flood insurance available only if the state in which the property is located has adopted a floodplain management system, including mandatory zoning of all floodplains. Wisconsin has participated in the program for decades. Wisconsin adopted sec. 87.30, Wis. Stats., which mandates floodplain management. In unincorporated areas, counties adopt and enforce floodplain zoning. Town approval of the original and amended County ordinances is not required, sec. 59.692, Wis. Stats., NR 116, Wis. Adm. Code. [http://docs.legis.wisconsin.gov/code/admin_code/nr/100/116.pdf]. DCTA certainly supports floodplain zoning as it has been adopted in Wisconsin. Dane County has existing floodplain zoning which is found in Chapter 17 of the County Code of Ordinances.

Under the federal program, floodplain zoning must prohibit construction of structures intended for human habitation in areas where there is a 1 percent probability of a flood in any given year. These areas are commonly known as “100 year floodplains.” The area included in the floodplain is determined by hydrology studies which consider rainfall, terrain, soils and historical flooding patterns. The floodplain studies result in preparation of Flood Insurance Rate Maps (FIRM) by the Federal Emergency Management Agency. The maps include areas within communities. Each map area is known as a “panel.” The map panels are updated periodically to reflect better data and changes in watersheds.

Every Wisconsin county, city and village is required to have a floodplain ordinance which complies with NR 116 standards. The ordinance also must adopt all of the FIRM panels that have been prepared for the jurisdiction, and additional flood prevention maps, such as the area below a dam which would be flooded if the dam failed.

Currently, the Wisconsin Department of Natural Resources is working with counties, cities and villages to update floodplain ordinances to comply with the DNR's 2012 model ordinance. DNR recommends the model ordinance be adopted by communities to comply with the State's requirements. The model ordinance is drafted so that the adopting community need only insert the community's name in five places in order to comply.

Dane County staff originally planned to amend Chapter 17 of the County Code to address necessary updates. Recently OA 40 was introduced by Supervisor Patrick Miles to make updating amendments to Chapter 17. After OA 40 was introduced, County staff learned that the DNR preferred that the County repeal and recreate the entire chapter in a form consistent with the DNR model ordinance. Brian Standing, Dane County senior planner, informed DCTA that the County will be introducing an ordinance amendment which is currently in drafting. There is a public hearing scheduled for July 22. The proposed ordinance is not yet available. The DNR's model ordinance is available for review now. [<http://dnr.wi.gov/topic/floodplains/documents/ModelOrdwithFloodStorageJan2012FINAL.pdf>]. The model ordinance tracks the requirements of NR 116. I reviewed the model ordinance, which was issued by the current DNR leadership. I am satisfied that it does not exceed the mandate of NR 116 and federal law.

DCTA learned of the proposal to repeal and recreate Chapter 17 only after someone brought a legal notice in the Wisconsin State Journal to our attention. That notice is the legal notice of the July 22, 2014 public hearing. No notice of the proposal or need to adopt a complete rewrite of Chapter 17 was sent to the Towns, the DCTA or the Dane County Cities and Villages Association [county floodplain ordinances indirectly affect cities and villages]. The ordinance is not a Chapter 10 amendment, and is not subject to Town veto. We would have appreciated hearing about this more directly. We have no indication that the County's actions were improperly motivated, however, and may have been an oversight. We note that Supervisor Patrick Miles has consistently attempted to communicate with the DCTA and towns about proposals he has advanced.

Nonetheless, this issue is moving forward very quickly and with little time to evaluate. For that reason, we will be watching for amendments.

This memo was written by Attorney Mark Hazelbaker. A version of the memo was reviewed by the DCTA Board. The Board will be taking formal action on this issue at its July 16, 2014 meeting.