

(Jefferson County, West Virginia)
FLOODPLAIN ORDINANCE

AN ORDINANCE ESTABLISHING A FLOODPLAIN AREA AND REQUIRING ALL CONTRACTORS, PERSONS, PARTNERSHIPS, BUSINESSES, AND CORPORATIONS TO OBTAIN A PERMIT FOR DEVELOPMENT AND THE CONSTRUCTION, SUBSTANTIAL IMPROVEMENT, OR RELOCATION OF ANY BUILDING OR STRUCTURE, AND PROVIDING FOR CERTAIN MINIMUM STANDARDS FOR CONSTRUCTION WITHIN THE FLOODPLAIN AREA AND SETTING FORTH SPECIAL PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS; AND ESTABLISHING PENALTIES FOR ANY PERSON WHO FAILS TO COMPLY WITH THE REQUIREMENTS OR PROVISIONS OF THIS ORDINANCE.

BE IT ENACTED AND ORDAINED by the County Commission of Jefferson County, as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Authority

- A. The provisions of this ordinance have been prepared with the intention of meeting the requirements of THE NATIONAL FLOOD INSURANCE ACT OF 1968 (42 U.S.C. 4001 et seq.) AMENDED BY THE CONGRESS OF THE UNITED STATES THROUGH THE 15TH.OF FEBRUARY, 1975 (PUBLIC LAW 91-152),
- B. Authority to adopt, administer and enforce this Ordinance is vested in the community pursuant to WEST VIRGINIA STATE CODES 7-1-3v, 7-1-3n and 7-1-3kk and WEST VIRGINIA STATE CODE 8A-4-2, 8A-5-7, 8A-7-2

Section 1.2 Effective Date

This Ordinance was originally established by action of the County Commission of Jefferson County on November 20, 1975, and took effect on the 20th day of December, 1975. It was amended and/or revised in October, 1980 and July, 1986, revised and re-enacted in March 1987, and amended on July 15, 1993 and December 10, 1998. This amended Ordinance shall take effect upon the date of its adoption by the County Commission of Jefferson County.

Section 1.3 Intent

The intent of this ordinance is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.

- C. Minimize danger to public health and safety by protecting water supply and sanitary sewage disposal, in cooperation with the County Sanitarian, and to protect natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing the unwise design and construction of development in areas subject to flooding.

Section 1.4 Abrogation and Greater Restrictions

This ordinance supersedes any ordinance currently in effect in flood prone areas. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.5 Applicability

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any land development or subdivision of land, or the new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within the Floodplain Areas of Jefferson County; unless the development is processed and approved by the Jefferson County Planning Commission under the land development ordinances (Subdivision and Zoning) of Jefferson County, and/or an Improvement Location Permit (ILP) application is submitted and approved under the Building Code Enforcement Ordinance and an Improvement Location Permit is obtained from the Departments of Planning, Zoning, and/or Engineering.

Provision of all other codes, ordinances, and regulations shall be applicable insofar as they are consistent with the provisions of this Ordinance and the community's need to minimize the hazards and damage resulting from flooding.

ARTICLE II - INTERPRETATIONS AND DEFINITIONS

Section 2.1 Interpretations

- A. For the purpose of this ordinance, the following interpretations shall apply:
1. Words used in the present tense include the future tense
 2. The singular includes the plural.
 3. The plural includes the singular.
 4. The word “person” includes a corporation, unincorporated association or partnership, as well as an individual.
 5. The Term “shall” or “will” is always mandatory.
 6. The word “building” or “structure” shall be construed as if followed by the phrase “or part thereof”.
 7. The word “Ordinance” shall refer to the Jefferson County Floodplain Ordinance.

Section 2.2 Definitions

Unless specifically defined below, words and phrases used in this ordinance shall be interpreted so as to give this ordinance it’s most reasonable application.

Appurtenant Structure

A structure on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. This does not include a gas or liquid storage tank or detached garages.

Base Flood

The flood, which has been selected to serve as the basis upon which the floodplain management provisions of this and other ordinances have been prepared; for purposes of this ordinance, the one-hundred (100) year flood.

Base Flood Elevation

The water surface elevation of the base flood in relation to the datum specified on the community’s Flood Insurance Rate Map. For the purpose of this ordinance, the one-hundred (100) year flood or 1% annual chance flood.

Basement

Any area of the building having its floor sub-grade (below ground level) on all sides.

Critical Facility

Any facility in which even a slight chance of flooding is too great a threat. Typical critical facilities include hospitals, fire stations, police stations, storage of critical records, and similar facilities. These should be given special consideration when formulating regulatory alternatives and floodplain management plans. A critical facility should not be located in a floodplain if at all possible. If a critical facility must be located in a floodplain, it should be provided a higher level of protection so that it can continue to function and provide services during a flood event.

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.

Flood

A general and temporary inundation of normally dry land areas.

Flood Insurance Rate Map (FIRM)

The official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration has delineated both the areas of special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study

The official report in which the Federal Emergency Management Agency has provided flood profiles, floodway information, and water surface elevations.

Floodplain

- (1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;
- (2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain Administrator

The Chief County Engineer or his/her designated agent/employee, shall be the Floodplain Administrator. The Floodplain Administrator may also be identified as the Floodplain Manager.

Floodway

The channel of a river or other watercourse and the adjacent land area that must be reserved to discharge the base flood without increasing the water surface elevation of that flood more than one foot at any point.

Flood Proofing

Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Freeboard

A factor of safety usually expressed in feet above a flood level for purposes of floodplain management.

Historic Structure

Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;
or,
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior;
or,
 - (2) Directly by the Secretary of Interior in states without approved programs.

Land Altering Activity (see “Development”)

Lowest Floor

The lowest floor of the lowest enclosed area (including basement). However, an unfinished enclosure constructed with flood resistant materials - as defined in FEMA Technical Bulletin 2-93 (FIA-TB-2) - and 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 connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

New Construction

Structures for which the Start of Construction as herein defined commenced on or after the 20th day of December, 1975 (date of original floodplain regulations) and including any subsequent improvements to such structures.

One-Hundred (100) Year Flood

A flood that has one chance in one-hundred or a one percent chance of being equaled or exceeded in any given year.

Person

Any individual or group of individuals, corporation, partnership, association or other entity, including State and local governments and agencies.

Principally Above Ground

Where at least 51 percent of the actual cash value of a structure, less land value, is above ground.

Recreational Vehicle

A vehicle which is:

- (a) built on a single chassis; and
- (b) 400 square feet or less when measured at the largest horizontal projection; and
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) 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 subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in Flood Insurance Studies and Flood Insurance Rate Maps as Zone A, AE, AO, A1-30, and A99. The term includes areas shown on other flood hazard maps that are specifically listed or otherwise described in this ordinance.

Start of Construction

The date the permit was issued, including permits for substantial improvement or repair of substantial damage, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond initial 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 an alteration, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State Coordinating Office

The West Virginia Division of Homeland Security and Emergency Management.

Stream

As defined in WV State Code 7-1-3U, any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

Structure

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

Substantial Damage

Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means cumulative flood-related damages sustained by a structure on two separate occasions during a 10 year period for which the cost of repairs at the time of each flood event equals or exceeds 25 percent of the market value of the structure before the damage occurred. See "Substantial Improvement."

Substantial Improvement

Any repair, 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 the Start of Construction of the improvement. This term includes structures which have incurred “substantial damage” as defined herein, regardless of the actual repair work performed. The term does not, however, include:

- a) Any project for improvement of a structure to correct an existing violation 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
- b) Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Violation

The failure of any building, structure, or development or other land altering activity, to be fully compliant with all requirements of this ordinance. A building, structure, development or other land altering activity without the required permits and approvals, or without the elevation certificate and other certifications, or without other evidence of compliance required by this ordinance, is presumed to be in violation until such time as that documentation is provided.

ARTICLE III - ESTABLISHMENT OF THE FLOODPLAIN AREA

Section 3.1 Identification

- A. The identified floodplain area shall be those areas of Jefferson County which are subject to the one-hundred (100) year flood, as shown on the Flood Insurance Rate Map (FIRM) and described in the Flood Insurance Study (FIS) prepared for Jefferson County, West Virginia by the Federal Emergency Management Agency (FEMA) dated the 18th day of December, 2009, or the most recent revision thereof.
- B. The identified floodplain area shall also be those areas of Jefferson County which have been identified as flood hazard areas by the County Commission of Jefferson County by use of historic or other technical data and shown on the Jefferson County “Local Flood Hazards Map”. These areas shall be designated as appropriate with the level of technical data described below and shall be managed accordingly.

Section 3.2 Descriptions of Floodplain Areas

The identified floodplain shall consist of the following four specific areas:

- A. The Floodway area (F1) shall be those areas identified as such in the FIS and as shown on the Flood Insurance Rate Map (FIRM). The term shall also include floodway areas identified in other studies for the approximated area discussed in Section D below.
- B. The Floodway Fringe area (F2) shall be those areas for which specific one hundred (100) year flood elevations have been provided in the FIS but which lie beyond the floodway area. These areas are shown on the FIRM.
- C. The AE Area without Floodway (F3) shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which 100-year flood elevations have been provided but no Floodway has been delineated.
- D. The Approximated area (F4) shall be those areas identified as Zone A on the FIRM included in the FIS prepared by FEMA, and for which no one hundred (100) year flood elevations have been provided. For these areas, elevation and floodway information from other Federal or State sources, or other source acceptable to the Floodplain Administrator, shall be used when available. Where other acceptable information is not available, the Floodplain Administrator shall require the applicant to determine the elevation with hydrologic and hydraulic engineering or other techniques. When Hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the technical methods used reflect currently accepted technical concepts and methodology. A summary of the study and the findings along with the detailed study, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

Section 3.3 Changes in Designation of Area

- A. The delineation of the identified floodplain area may be revised, by the County Commission of Jefferson County upon recommendation by the Floodplain Administrator, where natural or man-made changes have occurred and/or more detailed studies conducted or undertaken by the U.S. Army Corps of Engineers, a River Basin Commission, or other qualified agency or qualified individual, documents the necessity for such changes. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency (FEMA).
- B. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practical, but not later than six months after the date such information becomes available, the community shall notify the NFIP Administrator of the changes by submitting technical or scientific data.
- C. The County Commission of Jefferson County, upon recommendation by the Floodplain Administrator, may identify and regulate new flood hazard or ponding areas. These areas may be delineated using locally derived technical information such as flood of record, historic high water marks and/or topographic data.

Section 3.4 Boundary Disputes

Should a dispute arise concerning the identification of any flood prone area, an initial determination shall be made by the Floodplain Administrator; and any party aggrieved by this decision may appeal to the County Commission of Jefferson County. The burden of proof shall be on the appellant/applicant.

ARTICLE IV - UTILIZATION OF THE FLOODPLAIN AREA

Section 4.1 Floodway (F1)

- A. Within any floodway area (F1), no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in the Base Flood Elevation.

Section 4.2 Floodway Fringe (F2) and Approximated Floodplain (F4)

- A. In the Floodway Fringe (F2) and Approximated Floodplain (F4), any development and/or use of land shall be permitted provided that all such uses, activities and/or development shall be undertaken in strict compliance with the flood-proofing and related provisions contained herein and in all other applicable codes, ordinances and regulations.

Section 4.3 AE area without floodway (F3)

- A. Within any AE area without floodway, no new construction or development shall be allowed unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the 100-year flood more than one (1) foot at any point. This requirement can be satisfied by utilization of the floodway area where determined.

Section 4.4 Alteration or relocation of a stream

- A. Whenever a developer/person intends to alter or relocate a stream within the Floodplain Area, the developer/person shall notify in writing, via certified mail, the Jefferson County Floodplain Administrator, the State Coordinating Office, any adjacent communities/municipalities, and any adjacent property owners, of all such intended activities prior to the alteration or relocation of the stream. Copies of all required notifications must be submitted to the Federal Insurance Administration. In addition, the developer/person shall provide copies of all permits required by other agencies, to the Jefferson County Floodplain Administrator.
- B. The developer shall also assure the Jefferson County Floodplain Administrator in writing that the carrying capacity within the altered or relocated portion of the stream will be maintained. The Floodplain Administrator may require the applicant to demonstrate that the altered or relocated portion of stream will provide equal or greater conveyance than the original stream segment. When Hydrologic and hydraulic analyses are required, they shall only be undertaken by a registered professional engineer, who shall certify that the technical methods used reflect currently accepted technical concepts and methodology. A summary of the study and the findings along with the detailed study, analyses, computations, etc. shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator.

- C. The Floodplain Administrator may require the use of certain “best practice” techniques in the construction of bridges, culverts or stream crossings to prevent damage, loss of stream crossings and localized flooding caused by blockage. These techniques may include, but are not limited to, wing walls, trash grates or requiring openings to be of sufficient size to pass debris and/or anticipated future increases in flood heights.
- D. All new and replacement bridges, culverts and other stream crossings shall adhere to the relevant anchoring requirements contained in this ordinance.
- E. The developer is required to provide the community a legal agreement detailing all scheduled inspections and maintenance to be performed on altered or relocated watercourses including culverts, bridges and other stream crossings. It shall be the responsibility of the applicant to transfer this agreement to the new owner when the land associated with the watercourse alteration is transferred. A copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 8.3 of this ordinance.
- F. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

ARTICLE V - CRITERIA FOR BUILDING CONSTRUCTION APPROVAL

Section 5.1 General

Improvement Location Permits are required in order to determine whether all new building construction or substantial improvements are:

- A. Reasonably safe from flooding.
- B. Located in an identified Floodway, Floodplain, or other flood hazard area.
- C. Are located in accordance with Zoning ordinance, Subdivision ordinance, and Floodplain ordinance building setbacks.
- D. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- E. Constructed by methods and practices that minimize flood damage.
- F. Constructed 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.
- G. Approved by County Health Department for Well, Septic and other permits.

Section 5.2 Basic Permit Information

At a minimum, the Improvement Location Permit (ILP) shall include the following:

- A. Name and address of applicant
- B. Name and address of owner of land on which the proposed development/construction is to occur.
- C. Name and address of contractor performing the work.
- D. A description of site location sufficient to locate the project.
- E. A sketch plan of the site showing the exact size and location of the proposed building construction as well as any existing buildings or structures on the site.

Section 5.3 Elevated, Flood Proofed, & Flood Resistant Construction Information

Depending on the type of structure involved, the following information shall also be included in the application for work within the Floodplain Area:

A. Elevated Structures:

For structures to be elevated three feet above the Base Flood Elevation, provide the following:

1. A plan showing the size of the proposed structure and its relation to the lot boundary and where it is to be constructed on the lot.
2. A determination of elevations of the Base Flood, existing ground, proposed finished ground and lowest floor, certified by a Registered Professional Engineer or Surveyor on a FEMA Elevation Certificate.
3. Plans showing the method of elevating the proposed structure including details of proposed fills, pile structures, retaining walls, foundations, erosion protection measures, etc. When required by the Floodplain Administrator or Building Official, a Registered Professional Engineer or Architect shall prepare these plans.
4. Plans showing the methods used to protect utilities (including sewer, water, telephone, electric, gas, etc.) from flooding to three feet above the Base Flood Elevation at the building site.

B. Flood Proofed Structures:

For structures (nonresidential structures only) to be dry flood proofed to three feet above the Base Flood Elevation, provide the following:

1. Plans showing details of all flood proofing measures, prepared by a Registered Professional Engineer, and showing the size of the proposed structure and its relation to the lot boundary and where it is to be constructed on the lot.
2. A determination of elevations (elevation certificate) of the Base Flood, existing ground, proposed finished ground, lowest floor, and flood proofing limits; certified by a Registered Professional Engineer or Surveyor.
3. A Flood Proofing Certificate (e.g., FEMA 81-65, as revised by FEMA) shall be prepared by the Registered Professional Engineer who prepared the plans in item (1) above, stating the structure in question, together with associated utility and sanitary facilities, is designed so that:
 - (i) Below an elevation equal to the Base Flood Elevation plus three feet, the structure is water tight with walls substantially impermeable to the passage of water; and
 - (ii) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.

C. Flood Resistant Construction:

For appurtenant structures, and those fully enclosed areas of elevated structures that are located below the Base Flood Elevation (BFE), which are used solely for parking of vehicles and/or as storage area, which is to be constructed of flood resistant materials, provide the following:

1. Plans showing details of all flood resistant materials and flood resistant construction, prepared by a Registered Professional Engineer or Architect, and showing the size of the proposed structure and its relation to the lot boundary and where it is to be constructed on the lot. The plans shall show that:
 - (i) Flood resistant materials, as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2), are used in the construction of the structure from the lowest structural element to three feet above the Base Flood Elevation; and that all utilities are located at least three feet above the Base Flood Elevation; and
 - (ii) Confirm that hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement shall be certified by a Registered Professional Engineer or Architect, or meet or exceed the following minimum criteria:
 - a) 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.
 - b) The bottom of all openings shall be no higher than one foot above grade.
 - c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
2. A post-construction elevation report or certificate, based on finished construction, prepared by a licensed Professional Surveyor. The report/certificate shall certify that the structure and appurtenant utilities are:
 - (i) Constructed with flood resistant materials, as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2), from the lowest structural element to three feet above the Base Flood Elevation; and that all utilities are located at least three feet above the Base Flood Elevation; and
 - (ii) Confirm that hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters, or meet or exceed the following minimum criteria:
 - a) 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.

- b) The bottom of all openings shall be no higher than one foot above grade.
- c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

ARTICLE VI - CRITERIA FOR PRELIMINARY PLAT AND SITE PLAN APPROVAL

Section 6.1 General

A. Preliminary Plat:

The owner or developer of any proposed residential, commercial, or manufactured home subdivision shall submit and process a Preliminary Plat in accordance with Jefferson County land development ordinances.

B. Site Plan:

The owner or developer of any proposed manufactured home (rental unit) park or other commercial (for profit & non-profit), institutional, or industrial type land development project, shall submit and process a Site Plan in accordance with Jefferson County land development ordinances.

Section 6.2 Basic Preliminary Plat and Site Plan Information

At a minimum, the Preliminary Plat or Site Plan shall include the following information:

- A. Name of registered professional engineer, licensed professional surveyor or other qualified person responsible for providing the information required in this section.
- B. A map showing the location of the proposed subdivision and/or land development with respect to the county's floodplain areas, the proposed lot sites, and areas to be graded/filled.
- C. It is required that all subdivision proposals and manufactured home (rental unit) parks or other commercial (for profit & non-profit), institutional or industrial type development projects, or any other new development proposed to take place either fully or partially within the approximated floodplain (F4), and which are greater than Ten (10) lots or two (2) acres, whichever is the lesser, shall include base flood elevation data and shall delineate a floodway. If FEMA has completed a Flood Insurance Study (FIS), that data must be used to substantiate the base flood. Otherwise, the developer may submit data provided by an authoritative source, such as U.S. Army Corps of Engineers, U.S. Geological Survey, Natural Resources Conservation Service, state and local water resource departments, or technical data developed using detailed methodologies comparable to those contained in a Flood Insurance Study. This data shall be prepared and certified by a registered professional engineer, who shall certify that the technical methods used correctly reflect currently accepted technical concepts.
- D. Where the subdivision and/or development project lie partially or completely in the floodplain areas, the preliminary plat or site plan shall include detailed information giving the location and elevation of proposed roads, public utilities and building sites. All such maps shall also show contours at intervals of two (2) feet and identify accurately the boundaries of the floodplain areas.

Section 6.3 – Restrictions to Subdivision of Land in Floodplain Areas.

Subdivision of land in the floodplain area shall result in lots that include a buildable portion outside of the identified flood hazard area. The size of the buildable area shall be in accordance with the requirements of the Zoning and Subdivision Ordinances. All lots shall have a minimum building setback of 25' horizontal from the limits of the flood hazard area, or 2' vertical above the Base Flood Elevation, whichever is greater in the horizontal distance from the limits of the flood hazard area. All new structures must be sited on the portion of the subdivided lot that is located outside of the identified flood hazard area. No subdivision streets shall be located within the floodplain; however, a street may cross the floodplain for the purpose of gaining access to the other side of the stream provided it complies with all other local, State, and Federal design and permitting requirements.

Section 6.4 – Restrictions to the Development of Land in Floodplain Areas.

The development of any proposed manufactured home (rental unit) park or other commercial (for profit & non-profit), institutional, or industrial type development project shall result in a buildable area outside of the identified flood hazard area. The size of the buildable area shall be in accordance with the requirements of the Zoning and Subdivision Ordinances. The buildable area shall have a minimum building setback of 25' horizontal from the limits of the flood hazard area, or 2' vertical above the Base Flood Elevation, whichever is greater in the horizontal distance from the limits of the flood hazard area. All new building structures shall be sited on the buildable area located outside of the identified flood hazard area.

ARTICLE VII - SPECIFIC REQUIREMENTS

Section 7.1 Design and Construction Standards

In order to prevent excessive damage to buildings, structures, and related utilities and facilities, the following restrictions apply to all development, subdivision of land, manufactured home parks, new construction, construction of substantial improvements, and the repair of substantial damage to existing structures, occurring in the Floodplain Area:

A. Basements and Lowest Floors

1. Residential Structures: All new residential construction, relocation, and substantial improvements, including repair of substantial damage of residential structures, shall have the lowest floor, including basement, ductwork and utilities, elevated to three feet above the Base Flood Elevation.
2. Non-Residential Structures: All new non-residential construction, relocation, substantial improvements, including repair of substantial damage of non-residential structures, shall have the lowest floor, including basement, ductwork and utilities, elevated to three feet above the Base Flood Elevation; or, the structure, along with associated utility and sanitary facilities, is designed so that:
 - (i) Below an elevation equal to the Base Flood Elevation plus three feet, the structure is water tight with walls substantially impermeable to the passage of water; and
 - (ii) The structure will withstand the hydrostatic, hydrodynamic, buoyant, impact, and other forces resulting from the flood depths, velocities, pressures, and other factors associated with the Base Flood.
3. Fully Enclosed Areas Below the Base Flood Elevation

For all new construction, relocation, substantial improvements, and repair of substantial damage, with fully enclosed areas below the lowest floor that are used solely for parking of vehicles, building access, or for storage (including crawl spaces) in an area other than a basement, and which are subject to flooding, shall be designed and constructed as follows:

- (i) Flood resistant materials, as detailed in FEMA Technical Bulletin 2-93 (FIA-TB-2), are used in the construction of the structure from the lowest structural element to three feet above the Base Flood Elevation; and that all utilities are located at least three feet above the Base Flood Elevation; and
- (ii) Hydrostatic flood forces on exterior walls are equalized by allowing for automatic entry and exit of floodwaters. Designs for meeting this requirement

shall be certified by a Registered Professional Engineer or Architect, or meet or exceed the following minimum criteria:

- a) 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.
- b) The bottom of all openings shall be no higher than one foot above grade.
- c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

A Non-conversion Agreement shall be signed by the applicant whenever the community determines that the area below the first floor could be converted to a non-conforming use (generally applies to enclosed areas below base flood elevation that are 5 ft. high or more). This agreement shall state:

- (i) “The area below Base Flood Elevation shall not be converted for use other than for parking, building access, or for allowable storage as detailed in this ordinance”; and
- (ii) “The applicant agrees to notify prospective buyers of the existence of the non-conversion agreement. It shall be the responsibility of the applicant to transfer the agreement at closing to the new owner via notarized signature, a copy of all new agreements shall be provided to the Floodplain Administrator. Failure to transfer the agreement and provide a signed copy to the Floodplain Administrator shall subject the violator to the penalties set forth in Section 9.3 of this ordinance.”

B. Manufactured Home Placement

Certain unique characteristics of manufactured homes installed in flood hazard areas pose an elevated risk of substantial damage to property. Thus –

1. Manufactured homes to be placed or substantially improved within flood hazard areas shall be installed in accordance with the following standards:
 - a. The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated three feet above the Base Flood Elevation.
 - b. Elevation shall be on reinforced piers on a permanent foundation, or shall use foundation elements of at least equivalent strength engineered for use in a flood hazard area. Installation designs incorporating dry stacked block piers shall not be used in flood hazard areas.

- c. All manufactured homes shall be securely anchored to an adequately anchored foundation system in compliance with the requirements of 42 West Virginia Code of State Regulations, Series 19, Sections 10.1, 10.2, and 10b as authorized by West Virginia Code § 21-9-4. The anchoring shall be adequate to resist flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to the over-the-top and frame ties, attached to permanent foundation elements. Ground anchors may not be adequate to satisfy flood specific anchoring requirements. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- d. Permanently attached rigid skirts and perimeter wall skirts of brick or block must have openings; this type of skirting can collapse during floods and compromise supporting piers. The openings must be designed to automatically equalize hydrostatic flood forces by allowing for entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a Registered Professional Engineer or meet or exceed the following minimum criteria:
 - (i) 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.
 - (ii) The bottom of all openings shall be no higher than one foot above grade.
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- e. Any additions to a manufactured home shall be similarly anchored and vented.

C. Recreational Vehicle Placement

1. Recreational vehicles placed within any floodplain area shall:

- a. Be on site for fewer than 180 consecutive days; or
- b. Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its fully functioning wheels or jacking system, and is attached to the site only by quick disconnect utilities and security devices, and has no permanently attached additions; or
- c. Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this ordinance.

D. Placement of Fill Material

No fill shall be permitted in the floodway.

Placement of fill in other areas of the floodplain is restricted to functional purposes such as elevating a structure. Fill shall only be permitted in the same permit with the related

structure or other functional purpose. Placement of fill to dispose of spoil from excavation or to elevate yards, parking lots, or fields will not generally be considered a functional purpose. No fill shall be permitted in the identified flood hazard area unless compensatory storage is provided immediately adjacent to the site. All fill placed in the floodplain area shall meet or exceed the following standards:

1. Fill shall be used only to the extent to which it does not adversely affect adjacent properties. Jefferson County may require the applicant to demonstrate through engineering reports that proposed fill would not adversely affect adjacent properties. When required, Hydrologic and hydraulic analyses shall be undertaken only by professional engineers who shall certify that the technical methods used correctly reflect currently accepted technical concepts. The resultant study shall include a cover letter, signed and sealed by the responsible professional, providing a statement of findings in basic terms. In addition, studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Floodplain Administrator. During permit review the community shall consider the following issues that have the potential to cause adverse impact to adjacent properties:
 - a. Unacceptable increases in flood heights.
 - b. Blocking drainage from adjacent property.
 - c. Deflection of floodwaters onto adjacent existing structures.
 - d. Increases to stream velocity initiating or exacerbating erosion problems.
 - e. Other unique site conditions may be considered when determining whether fill will cause adverse impact to adjacent property including, but not limited to, subsidence areas, Karst topography, stream blockages, and steep topography adjacent to the channel.
2. Fill shall be used only to the extent to which it does not adversely affect the capacity of channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.
3. Filled site must be contoured to drain properly (avoid ponding)
4. Fill shall extend beyond a structure for a sufficient distance to provide acceptable access. For residential structures, fill shall extend laterally fifteen (15) feet beyond the building line from all points before the start of sloping required in following subsection. For nonresidential structures, fill shall be placed to provide access acceptable for intended use. At grade access, with fill extending laterally fifteen (15) feet beyond the building line shall be provided to a minimum of twenty-five (25) percent of the perimeter of a nonresidential structure.
5. Fill shall consist of soil or rock material only. Sanitary landfills shall not be permitted and no trash or woody debris shall be buried on site.
6. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling. Fill compaction standards must be appropriate to proposed post fill use, particular attention is necessary when fill is being used to elevate a structure.

7. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the Floodplain Administrator.
8. Fill site and fill must be protected from erosion.
9. All applicants placing fill in a special flood hazard area must obtain a Conditional Letter of Map Revision (CLOMR) from FEMA when directed to do so by the Floodplain Administrator before a permit can be issued. After fill is finished the applicant must convert the CLOMR to a Letter of Map Revision based on Fill (LOMR-F) before a certificate of compliance can be issued.
10. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the Flood Insurance Study and/or Flood Insurance Rate Maps, when notified by the Floodplain Administrator, and must pay any fees or other costs assessed by FEMA for this purpose.

E. Placement of Buildings & Structures

1. All buildings and structures shall be constructed or placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum obstruction effect upon the flow and height of floodwater.

F. Anchoring

1. All buildings and structures and other development, including stream crossings, shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, and lateral movement; thus reducing the threat to life and property and decreasing the possibility of the blockage of bridge openings and other restricted sections of the watercourse.
2. All air ducts, large pipes, swimming pools, and storage tanks located at or below the Base Flood Elevation shall be firmly anchored to resist flotation.

G. Building & Structures Flood Hazard Area Setback

Buildings and structures shall be set back a minimum of 25' horizontal from the limits of the flood hazard area, or 2' vertical above the Base Flood Elevation, whichever is greater in the horizontal distance from the limits of the flood hazard area.

The Floodplain Administrator may consider an appeal to the Flood Hazard Area setback requirement if the applicant demonstrates that it is impossible or impractical to allow any development without encroachment into the Flood Hazard area. When the flood hazard area is the only reasonable alternative, the applicant shall demonstrate that the encroachment is the minimum necessary to accomplish the project.

H. Storage of Materials in the Flood Hazard Area

1. No materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal, or plant life, shall be stored below the Base Flood Elevation.

I. Utility and Facility Requirements

1. All new or replacement potable water systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the system.
2. All new or replacement sanitary sewage disposal systems, whether public or private, shall be designed to minimize or eliminate infiltration of floodwaters into the systems, and discharges from the systems into the floodwaters.
3. Onsite waste water disposal plants/systems shall be located to avoid impairment to them or contamination from them during flooding.
4. All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.

J. Drainage

Adequate drainage shall be provided to reduce exposure to flood hazard.

ARTICLE VIII - ADMINISTRATION

Designation of Floodplain Administrator

The Chief County Engineer is hereby appointed as Floodplain Administrator to administer this ordinance.

Section 8.1 Building Permits and Subdivision & Site Plan Approvals Required

It shall be unlawful for any contractor, person, partnership, business, or corporation to undertake or cause to be undertaken, any development, new construction, substantial improvement, repair of substantial damage, or the placement or relocation of any structure (including manufactured homes) within the floodplain area, unless an Improvement Location Permit is obtained. In addition, where land, which is either partially or fully in the regulatory floodplain, is to be subdivided, utilized for a manufactured home park or subdivision, or otherwise developed, a subdivision plat and/or site plan shall be submitted, processed, and approved under the land development ordinances of Jefferson County prior to any development

Section 8.2 Approval of Permits and Plans

All permits and plans shall be approved only after it has been determined that the proposed work to be undertaken will be in conformance with local, State and Federal laws and regulations. The owner/contractor/developer shall be responsible for obtaining all necessary permits and approvals from all other governmental agencies and for providing copies to the appropriate reviewing agency of Jefferson County, for their records.

Section 8.3 Application Procedures

Application for an Improvement Location Permit (building permit) and/or a subdivision or site plan approval shall be made in writing on the forms and in the format prescribed by Jefferson County, and shall include all information stipulated under Article V of this ordinance.

Section 8.4 Changes

After the issuance of an Improvement Location Permit (building permit), no changes shall be made to the permit application, permit, building plans, specifications, or any other documents submitted with the application, without the consent of the Floodplain Administrator.

After approval of a Preliminary Plat and/or Site Plan by the Planning Commission, no changes shall be made to the application, or any of the plans and specifications, or any other documents submitted with the application, without the consent of the Floodplain Administrator.

Section 8.5 Permit Placards

Any permit placard issued in the administration of this ordinance shall be prominently displayed on the premises by the owner during the time period from when construction is started until construction is complete.

Section 8.6 Start of Construction

Work authorized under this ordinance, shall begin within 180 calendar days from the date the permit/approval is issued. Otherwise, the permit/approval shall expire unless a time extension is requested in writing by the owner and the time extension is granted in writing by the Floodplain Administrator. Each time extension shall not be for more than a 180 calendar day period.

This section shall not supersede more stringent requirements under other applicable ordinances.

Section 8.7 Inspections and Revocations

During the construction period, the Floodplain Administrator or other authorized official may inspect the premises to determine that the work authorized under this ordinance is progressing in compliance with the information provided on the permit application and with all applicable laws and ordinances.

In the event the Floodplain Administrator discovers that the work authorized under this ordinance does not comply with the permit application or any applicable laws and ordinances, or that there has been false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the permit and issue a "Notice of Violation".

Section 8.8 Fees

Fees, based on the prevailing fee schedule approved by the County Commission of Jefferson County, may be assessed to defray the costs of administering this ordinance.

ARTICLE IX – APPEALS, ENFORCEMENT AND PENALTIES

Section 9.1 Appeals

1. Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provision of this ordinance, it is the right of that person to appeal to the County Commission of Jefferson County, which shall be known as the Appeals Authority. Such appeal shall be filed with the County Commission in writing, within thirty (30) days after notification of the decision by the floodplain administrator. Upon receipt of such appeal, the Appeals Authority shall set a time and place, not less than fifteen (15) nor more than sixty (60) days from receipt of the written appeal request, for the purpose of hearing the appeal. Notice of the time and place of the hearing shall be given to all parties at which time they may appear and be heard. The determination by the Appeals Board shall be final in all cases.

Section 9.2 Appeal Review Criteria

- A. All appeals contesting only the permit fee, the cumulative substantial damage requirement, the flood protection setback requirement, or the freeboard requirements, may be handled at the discretion of the Appeals Board. All decisions on appeals to all other provisions of this ordinance shall adhere to the following criteria:
1. Affirmative decisions shall only be issued by the Appeals Board upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the appeal would result in exceptional hardship to the applicant, and (iii) a determination that the granting of an appeal 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 ordinance.
 2. An affirmative decision shall be issued only upon determination that it is the minimum necessary, considering the flood hazard, to afford relief. Financial hardship, as a sole criterion, shall not be considered sufficient justification to grant an appeal.
 3. An affirmative decision may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 4. The Appeals Board shall notify the applicant in writing over the signature of a community official that (i) the issuance of a decision to allow construction of a structure below the Base Flood Elevation will result in increased premium rates for flood insurance, (ii) such construction below the Base Flood Elevation increases risk to life and property. Such notifications shall be maintained with a record of all decisions as required in paragraph (5) of this section; and
 5. The Appeals Board shall (i) maintain a record of all decisions including justification for their issuance, and (ii) report such decisions issued in its biannual report to the Federal Insurance Administration.

6. An affirmative decision shall not be granted for any construction, development, use or activity within any floodway area that would cause any increase in the Base Flood Elevation.

Section 9.3 Enforcement

A. Authority

The governing body, Floodplain Administrator, Ordinance Compliance Officer, or any authorized employee or agent may enforce this ordinance in the manner provided for in this section and by applicable law.

B. Procedure

1. Upon learning of a potential violation of this ordinance, the Ordinance Compliance Officer or staff shall investigate to determine whether a violation has occurred.
2. When it appears after investigation that a violation of this ordinance has occurred, the Ordinance Compliance Officer shall notify the violator by means of written violation notice. The violation notice shall specify the nature of the violation and request that the violation cease within fifteen (15) days from the date appearing on the notice. Failure to terminate the violation within this time period shall be cause for the Ordinance Compliance Officer, governing body, or authorized employee or agent to:
 - a) Seek an injunction in the Circuit Court of Jefferson County to restrain the violator from continuing the violation, including but not limited to requests for the removal of structures or land uses from the property involved; and
 - b) Seek a misdemeanor conviction in magistrate court or circuit court.

Section 9.4 Penalties

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or direction of the Floodplain Administrator, or any other authorized employee of the community, shall be guilty of an offense and, upon conviction, pay a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00), plus cost of prosecution. In default of such payment such person shall be imprisoned for a period not to exceed 10 days. Each day during which any violation of this Ordinance continues shall constitute a separate offense. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or non-compliance with this Ordinance or permit it to continue; and all such persons shall be required to correct or remedy such violations or non-compliance within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in non-compliance with this ordinance may be declared by the County Commission of Jefferson County to be a public nuisance and abatable as such.

ARTICLE X – GOVERNMENT ACTIONS

Section 10.1 – Municipal Annexation

- A. The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program.
- B. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards.
- C. All plats or maps of annexation shall show the floodplain boundaries, Base Flood Elevation and location of the floodway where determined.
- D. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Insurance Administration in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.
- E. NFIP participating communities must notify the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. A copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority must be included with the notification.

Section 10.2 – Permits for Government Entities.

- A. Unless specifically exempted by law, all public utilities and Municipal, County, State and Federal entities are required to comply with this ordinance and obtain all necessary permits. Any entity claiming to be exempt from the requirements of this ordinance must provide a written statement setting forth the rationale for exemption. In addition the entity claiming exemption shall provide copies of all relevant legal documentation demonstrating the exemption.

ARTICLE XI - SEVERABILITY AND MUNICIPAL LIABILITY

Section 11.1 Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect and for this purpose the provisions of this ordinance are hereby declared to be severable.

Section 11.2 Liability

The granting of a permit or approval of a subdivision or development plan in an identified flood-prone area, shall not constitute a representation, guarantee, or warranty of any kind by the County Commission of Jefferson County, or by any official or employee thereof, of the practicability or safety of the proposed use, and shall create no liability upon the County Commission of Jefferson County or by any official or employee thereof.

The Floodplain Administrator or employee or agent charged with the enforcement and administration of this Ordinance, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by this Ordinance or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against any officer or employee or agent because of an act performed by that officer or employee or agent in the lawful discharge of duties and under the provisions of this Ordinance shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The Floodplain Administrator or any employee or agent shall not be liable for the cost of any action, suit, or proceeding that is instituted in pursuance of the provisions of this code.

ARTICLE XII - ENACTMENT

This Floodplain Ordinance is hereby enacted and ordained this

5th day of November, 2009, effective immediately.

By: _____

Dale Manuel, President
County Commission of Jefferson County

Attest:

Jennifer Maghan, County Clerk