

Tuscaloosa County Flood Damage Prevention Ordinance

The framers of our U.S. Constitution understood that the “principle of” and “protection of” private property rights was one of the cornerstones of liberty. Therefore, one of the most important concepts incorporated into our governmental system was to deny control of private property rights to the federal government. In fact, the founders intended our constitution to form the chains that bind the powers of a tyrannical, centralized government. This “minor” detail, limiting governmental powers, is overcome in part by local adoption of the "Flood Damage Ordinance." At first glance this ordinance appears to be benign or even beneficial. But to say that the devil is in the details is an understatement of monumental proportions in this situation.

The National Flood Insurance Program is a Federal program that sometimes subsidizes[1] flood insurance premiums. It is often hawked by county governments as a justification for the adoption of this ordinance.[2] Is a small reduction in premiums for a few worth such a massive loss of property rights for all? Also, many local authorities have claimed that upper levels of government have mandated local adoption. This is a false statement, for the National Flood Insurance Program is voluntary.[3] Likewise, asserting that property owners actually in a floodway will be able to obtain flood insurance is also a false statement! Why?

The Tuscaloosa County Public Works Department[4] is charged with the responsibility of implementing this ordinance and “may” at its discretion[5] prevent flood insurance from being sold to local residents, and there are seven objectives listed for the "Flood Damage Ordinance"but providing flood insurance is NOT one of them[6].

Citizens are obviously being misled as to the real intentions of those promoting these ordinances.

This ordinance can never be fully understood by those subject to its authority because every rule and regulation ever written or “yet to be written” by FEMA and, hence, the Federal government, is “adopted by reference and declared a part of this ordinance.”[7] The rules could be completely changed tomorrow and they would still apply and still be enforceable. Therefore, compliant property owners are merely a bureaucratic pen stroke away from noncompliance and thereafter subject to fines, restrictions or demolition of their private property!

Floodways - Who designates them? Hired contractors[8] operating under the authority of FEMA designate floodways. Of course, since FEMA is paying the bill, it is a forgone conclusion that the contractor will provide a floodway map that reflects the desires and aspirations of the federal government, which is, of course, “sustainable development[9]” and “governance[10]”.

In a floodway, the following “encroachments” are prohibited:

- New construction,
- Substantial improvements
- or other development within the adopted regulatory floodway.[11]”

What is “new construction”? New Construction is not something yet to be built, as one would normally assume! No, this ordinance states that new construction means structures for which the “start of construction” commenced on or after August 7, 2001, and includes any subsequent improvements to the structure[12].

What is “substantial improvement?” “Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value[13]...” “Market value” would, of course, reflect the value of a structure located in a floodway. *(This value would be calculated after the property had lost most of its value because of these very regulations. This regulatory loss of value will also allow the confiscation of your property at a small fraction of its original value.)*

Does the Flood Damage Ordinance affect property owners above the floodway? Yes! Even if your property is on a ridge top with no water sources and outside the floodway, you would still be required to prove that runoff from your property did not affect flooding of properties at lower elevations before you would be allowed to build or alter your property in any way. This would be very expensive if not impossible to do. Under this ordinance you have lost your presumption of innocence. You are guilty until you can prove yourself innocent.

What about taxes? Consider - In Houston, Texas recently, 10,000 homeowners lost most of the value of their homes because of the passage of a flood ordinance. Patrick O'Connor & Associates, a professional appraisal corporation, studied the impact of this ordinance. Their findings – Houston will lose between 1.9 and 3.5 *billion* dollars worth of taxable property from their tax base. This equates to 38 million to 70 million dollars in revenue loss each year for the city.⁷ The result - owners of the remaining taxable property (including the ridge top) will have to shoulder the tax burden, while the flood way property owners relinquish title to their property rendered worthless by governmental regulations. Everyone will be harmed by these regulations.

Footnotes:

Tuscaloosa County Property Rights Alliance

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1. National Flood Insurance Program, Program Description, Page 3, <http://www.fema.gov/doc/library/nfipdescrip.doc> “In exchange for the availability of subsidized insurance for existing buildings, communities are required to protect new construction and substantially improved structures through adoption and enforcement of community floodplain management ordinances.”
2. Ibid. Page 27. “In exchange for this subsidized insurance, participating communities must require new construction and substantially improved structures to meet the minimum requirements of the NFIP.”
3. Ibid. Page 12. “Community participation in the NFIP is voluntary.”
4. Tuscaloosa County's Flood Damage Prevention Ordinance, Article 3, Section A, The Tuscaloosa County Public Works Department is hereby appointed to administer and implement the provisions of this ordinance.
5. Ibid. Article 5, Section 6, Section 1316 Definition, “No new flood insurance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.”
6. Ibid. Article 1, Section D, Objectives
 1. to protect human life and health;
 2. to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains;
 3. To help maintain a stable tax base by providing for the sound use and development of areas of flood prone areas in such a manner as to minimize future flood blight areas,
 4. to minimize expenditure of public money and costly flood control projects;
 5. to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 6. to minimize prolonged business interruptions, and;
 7. to insure that potential buyers are notified that property is in a flood area.
7. Ibid, Article 2, Section B, “The Areas of Special Flood Hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS), dated September 28, 2007 with accompanying maps and other supporting data and any revision, thereto, are adopted by reference and declared a part of this ordinance.”
8. Ibid, Article 2, Section B, “Areas of Special Flood Hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in the FIS. A draft FIS can be prepared by a study contractor to FEMA under 44 CFR Part 66 or by appellants under 44 CFR Part 65 for the purpose of establishing or revising.
9. Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Brundtland Report 1987
10. "Governance is not government -- it is the framework of rules, institutions, and practices that sets limits on the behavior of individuals, organizations and companies", United Nations, Human Development Report, 1999, page 8.
11. Tuscaloosa County's Flood Damage Prevention Ordinance, Article 4, Section C, 1b
12. Ibid, Article 6, Definitions
13. Ibid, Article 6, Definitions
14. Channel 11 KHOU Houston Texas, http://www.youtube.com/watch?v=8g4FF-Y2k_w, see also <http://www.houstonfloodway.org/> and http://www.houstonfloodway.org/documents/PatOConnor_COH_Ordinance1943_041408_Letter.pdf

