

*Note This ordinance
has been amended
to ordinance 05-03
Towards back of
Book.*

ORDINANCE NO. 87-1
FLOOD PLAIN MANAGEMENT

Section 1.0

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

City of

1.1 Statutory Authorization. The Legislature of the State of North Dakota² has in Chapter 40-47 of the North Dakota Century Code, as amended, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the City Council of the City of Hebron, North Dakota does ordain as follows:

1.2 Findings of Fact. The flood hazard areas of the City of Hebron are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commercial and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

1.3 Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;
2. To minimize expenditure of public money for costly flood control projects;

3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
 4. To minimize prolonged business interruptions:
 5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
 6. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
 7. To insure that potential buyers are notified that property is in an area of special flood hazard; and,
 8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- 1.4 Methods of Reducing Flood Losses. In order to accomplish its purposes, this ordinance includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural flood plains, stream channels and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage; and,
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

Section 2.0

DEFINITIONS

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

"APPEAL" means a request for a review of the Hebron Zoning Board's interpretation of any provision of this ordinance or a request for a variance.

"Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

"Base Flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Development" means 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 located within the area of special flood hazard.

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

1. The overflow of inland waters and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance Rate Map" (FIRM) means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" means the official report provided in which the Federal Emergency Management Agency has provided flood profiles, as well as the Flood Boundary-Floodway Map and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other water-course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

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

"Manufactured home" means a structure that is transportable in one or more sections, built on a permanent chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. It includes recreational vehicles or travel trailers placed on a site for more than 180 consecutive days.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include 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.

"Structure" means a walled and roofed building, manufactured home, or a liquid storage tank, that is principally above ground.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

1. Before the improvement or repair is started, or
2. If the structure has been damaged and is being restored, before the damage occurred.

For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions, or
2. Any alteration of a structure listed on the national Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

Section 3.0

GENERAL PROVISIONS

- 3.1 Lands to which this ordinance applies. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Hebron, North Dakota.
- 3.2 Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Hebron, North Dakota" dated March, 1979 with accompanying Flood Insurance Rate Maps and Flood Boundary-Floodway Maps is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file in the office of the City Auditor in the City of Hebron, North Dakota.
- 3.3 Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500.00 or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Hebron from taking such other lawful action as is necessary to prevent or remedy any violation.
- 3.4 Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- 3.5 Interpretation. In the interpretation and application of this ordinance, all provisions shall be:
1. Considered as minimum requirements;
 2. Liberally construed in favor of the governing body; and,
 3. Deemed neither to limit nor repeal any other powers granted under State statutes.
- 3.6 Warning and Disclaimer of Liability. The degree of flood protection by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Hebron, any officer or

employee thereof or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 4.0

ADMINISTRATION

4.1 Establishment of Development Permit. A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.2. Application for Development Permit shall be made on forms furnished by the Building Inspector and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question: existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing.

Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level to which any structure has been floodproofed;
3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 5.2-2; and
4. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

4.2 Designation of the Local Administrator. The City Zoning Board is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

4.3 Duties and responsibilities of the Zoning Board. Duties of the City Zoning Board shall include, but not be limited to:

1. Review all development permits to determine that the permit requirements of this ordinance have been satisfied.
2. Review all development permits to determine that all necessary permits have been obtained from those Federal, State or local governmental agencies from which prior approval is required.
3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 5.3(1) are met.

4.3-2 Use of other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the City Zoning Board shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal State or other source, in order to administer Sections 5.2-1, SPECIFIC STANDARDS, Residential Construction, and 5.2-2, SPECIFIC STANDARDS, Non-residential Construction.

4.3-3 Information to be Obtained and Maintained.

1. Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
2. For all new substantially improved floodproofed structures:
 - (i) Verify and record the actual elevation (in relation to mean sea level; and to which the structure has been floodproofed.
 - (ii) Maintain the floodproofing certifications required in Section 4.1 (3).
3. Maintain for public inspection all records pertaining to the provisions of this ordinance.

4.3-4 Alteration of Watercourses.

1. Notify adjacent communities and the State Water Commission prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

4.3-5 Interpretation of FIRM Boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 4.4.

4.4 Variance Procedure.

4.4-1 Appeal Board

1. The Zoning Appeal Board as established by the City of Hebron shall hear and decide appeals and requests for variances from the requirements of this ordinance.

2. The Zoning Appeal Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the City Zoning Board in the enforcement or administration of this ordinance.
3. Those aggrieved by the decision of the Zoning Appeal Board or any taxpayer may appeal such decision to the District Court as provided in the North Dakota Century Code, as amended.
4. In passing upon such applications, the Zoning Appeal Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
 - (i) the danger that materials may be swept onto other lands to the injury of others;
 - (ii) the danger to life and property due to flooding or erosion damage;
 - (iii) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iv) the importance of the services provided by the proposed facility to the community;
 - (v) the necessity to the facility of a waterfront location, where applicable;
 - (vi) the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (vii) the compatibility of the proposed use with existing and anticipated development;
 - (viii) the relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
 - (ix) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - (xi) the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
5. Upon consideration of the factors of Section 4.4-1 (4) and the purposes of this ordinance, the Zoning Appeal Board may attach such

conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

6. The City Zoning Board shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

4.4-2 Conditions of Variances

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (i-xi) in Section 4.4-1(4) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 4.4-1(4), or conflict with existing local laws or ordinances.
6. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the

cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Section 5.0

PROVISIONS FOR FLOOD HAZARD REDUCTION

5.1 General Standards. In all areas of special flood hazards the following standards are required:

5.1-1 Anchoring.

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure and capable of resisting the hydrostatic and hydrodynamic loads.
- (2) All manufactured homes shall be anchored and elevated to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Special requirements may be:
 - (i) over-the-top ties be provided at each of the four corners of the mobile home, with two additional ties per side at intermediate locations, with manufactured homes less than 50 feet long requiring one additional tie per side;
 - (ii) frame ties be provided at each corner of the home with five additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring four additional ties per side;
 - (iii) all components of the anchoring system be capable of carrying a force of 4,800 pounds; and,
 - (iv) any additions to the mobile home be similarly anchored.

5.1-2 Construction Materials and Methods.

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

5.1-3 Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and
- (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

5.1-4 Subdivision Proposals

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or 5 acres (whichever is less).

5.2 Specific Standards. In all areas of special flood hazards where base flood elevation data have been provided as set forth in Section 3.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or in Section 4.3-2, Use of Other Base Flood Data, the following standards are required:

5.2-1 Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

5.2-2 Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base floor elevation; or, together with attendant utility and sanitary facilities, shall:

- (1) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (2) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (a) a minimum of two openings having a total net area of not less than one 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, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and
- (3) be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official as set forth in Section 4.3-3(2).

5.2-3 Manufactured Homes.

- (1) Manufactured homes shall be anchored in accordance with Section 5.1-1(2).
- (2) All manufactured homes or those to be substantially improved shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and is securely anchored to an adequately anchored foundation system.

5.3 Floodways. Located within areas of special flood hazard established in Section 3.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If section 5.3(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 5.0 PROVISIONS FOR FLOOD HAZARD REDUCTION.

FIRST READING : March 2, 1987

SECOND READING

AND FINAL APPROVAL : April 5, 1987

Arlyn J. Price
City Auditor

Ken Redding
Mayor