



By Rebecca Quinn, CFM

Do NFIP Communities Have a Responsibility to Inspect?

Have you ever had someone suggest that local officials who are responsible for administering and enforcing their community's floodplain management regulations aren't required to make inspections? After I share my answer, I'll give you my take on an offshoot of that question — after damaging events, is there a responsibility to proactively identify buildings that might have incurred substantial damage?

Communities that participate in the National Flood Insurance Program must adopt and enforce regulations that meet or exceed the minimum requirements — and we all point to the NFIP regulations in 44 CFR in Sections 59, 60.2, and 60.3. But look at those regulations and you don't see the word "inspect." Does this mean there's something to the idea that local floodplain administrators don't have to inspect permitted development (or pay attention to unpermitted activity in SFHAs)?

Well, no. The NFIP regulations clearly require communities to enforce the regulations they adopt (see sidebar). How do you enforce if you don't inspect? Indeed, I interpret the qualifying criterion in § 59.2(b) to mean that local regulations should spell out inspections as part of "effective enforcement provisions." Every state model ordinance I've worked on includes a section on inspections, including inspections of buildings and inspections of development other than buildings. Contrast that with dozens of state model ordinances and community regulations I've seen that do not have any provisions for inspections.

In the box on page 15, I show generic ordinance language to specify the responsibility for inspections and to spell out inspections — including language I've not used before to call for inspecting SFHAs after damaging events. This sample language should be modified in communities that rely on flood provisions in their building codes because building codes usually specify a series of inspections that are the responsibility of the Building Official (who may or may not be the same official as the Floodplain Administrator). The two building inspections in the sample language below are similar to what's in most building codes. Remember, you should always check with your state NFIP coordinator or FEMA regional offices before amending your community's floodplain management regulations.

Do Communities Have a Responsibility to Proactively Identify Possible Substantial Damage in the Period Shortly After Damaging Events Occur?

Notice that my question doesn't ask about making substantial damage determinations shortly after a disaster. There is a difference between collecting data about damaged buildings and using estimates of costs to repair and estimates of market values to screen damaged buildings to identify those that are likely to have incurred substantial damage and actually making determinations. Whatever you call them (estimates, evaluations, assessments), the information based on post-event field data are not necessarily the end point—those data might not end up being used to make the determinations. Owners always have the option to accept the results based on that post-event estimates or to submit their own estimates of what it'll cost to repair buildings to pre-damage condition. And they have the option to accept adjusted tax assessed values or obtain estimates of the pre-damage market value of their buildings.

NFIP Regulations

44 CFR § 59.1: *Community* means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, **which has authority to adopt and enforce flood plain management regulations** for the areas within its jurisdiction.

44 CFR § 59.2: (b) To qualify for the sale of federally-subsidized flood insurance a community **must adopt** and submit to the Federal Insurance Administrator, as part of its application, **flood plain management regulations**, satisfying at a minimum the criteria set forth at part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. **These regulations must include effective enforcement provisions.**

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SAMPLE ORDINANCE LANGUAGE FOR INSPECTIONS

Duties and responsibilities. The Floodplain Administrator shall make the inspections specified in Section XXX of this ordinance. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit or approval.

SECTION XX INSPECTIONS

XXX.1 General. Development for which a floodplain development permit or approval is required shall be subject to inspection.

XXX.2 Development other than buildings. The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

XXX.3 Buildings and manufactured homes. The Floodplain Administrator shall inspect buildings and manufactured homes to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals, including:

1. After placement of the lowest floor, including basement, and prior to further vertical construction. The permit applicant shall document the elevation of the lowest floor by submission of a FEMA Elevation Certificate (under construction).
2. Prior to the final inspection. The permit applicant shall document the elevation of the lowest floor by submission of a FEMA Elevation Certificate (finished construction).

XXX.4. After damage events. The Floodplain Administrator shall inspect special flood hazard areas where buildings are damaged by any cause and shall make a preliminary assessment as to whether buildings may have incurred substantial damage.

So, now let's answer the question. Can local officials just wait for property owners to apply for permits to repair buildings or do communities have a responsibility to be proactive after damaging events to identify buildings that may have been substantially damaged? The NFIP regulations do not explicitly state that expectation. But isn't it a part of the community's responsibility to enforce what they adopt? Again, my answer is yes. Here's my logic:

1. To participate in the NFIP, communities are required to enforce their adopted floodplain management regulations, which in effect are local laws.
2. Local floodplain management regulations require communities to regulate development in special flood hazard areas, including new construction as well as improvements and repairs of existing buildings and legal non-conforming buildings (see the [November 2021](#) Notebook column for those terms).
3. Local officials have a duty to determine when improvements are substantial improvement and when damage is substantial damage. Rather than articulate how SI/SD determinations are made, the vast majority of local ordinances rely on the definitions for those terms. And that means local officials have a duty to determine when improvements or repairs meet the criteria specified in the definitions. In the box below I show generic ordinance language to spell out how SI/SD determinations are made. Remember, check with your state NFIP coordinator or FEMA regional office before amending your regulations.
4. Proactively identifying damaged buildings that require permits for repair is, in a way, helping owners comply with the law. This should reduce the number of owners who start work without permits, and reduce the number of violations cited.
5. Proactively identifying buildings in SFHAs that might be substantially damaged helps owners understand the requirements of the law and how bringing buildings into compliance will reduce the chances that they'll get flooded again. This also contributes to increasing community resilience to future flooding.

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SAMPLE ORDINANCE LANGUAGE SI/SD DETERMINATIONS

Market value means the value of buildings, excluding the land and other improvements on the parcel. Market value is the actual cash value (in-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

Duties and Responsibilities

XXX.xx Substantial improvement and substantial damage determinations. For applications for permits to improve buildings, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, and any other improvements, and for applications to repair damage from any cause, the Floodplain Administrator shall:

1. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser; in the case of improvements, the market value of the building shall be the market value before the start of construction of the proposed work; in the case of repair, the market value of the building shall be the market value before the damage occurred and before any repairs are made;
2. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building;
3. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
4. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with this ordinance is required.

Be sure to refer your citizens, elected officials, and colleagues to [Answers to Questions about Substantially Improved/Substantially Damaged Buildings](#) (FEMA 213). FEMA 213 hits all the key points about SI/SD, but for your own challenges enforcing SI/SD, you should keep a copy of [Substantial Improvement / Substantial Damage Desk Reference](#) (FEMA P-758) close at hand.

Submit your own items or suggestions for future topics to column editor Rebecca Quinn, CFM, at rcquinn@earthlink.net. Comments welcome! Explore back issues of the [Floodplain Manager's Notebook](#).



The banner features a dark blue background with a white diagonal line. On the left, there is a stylized mountain range with a hiker silhouette and a lighthouse on the right. The text 'ASFPM' is prominently displayed in white, with 'FLOODPLAIN MANAGEMENT FROM APPALACHIA TO THE ATLANTIC' underneath. Below this, it says '2023 ANNUAL CONFERENCE | RALEIGH, NORTH CAROLINA'. A water drop icon with 'ASFPM' inside is positioned above the date 'MAY 7-11, 2023 RALEIGH, NC'. At the bottom, the website 'ASFPMconference.org' is listed.

By Ray Carroll, MAI, SRA, CFM

The Post-Disaster Benefits of Actual Cash Value

Given the wide media coverage of how Hurricane Ian affected Florida, let's explore how Actual Cash Value appraisals perform in post-disaster situations. I've been a certified real estate appraiser in Florida for many years and I've done a lot of post-disaster appraisal work, focusing largely in southwest Florida, including Naples and Marco Island which are located in coastal Collier County.

Disaster Event

On September 28-29, Hurricane Ian moved slowly ashore in southwest Florida, then crossed the entire state. High water and winds affected coastal communities and inland communities — two weeks later some waterways are still above flood stage. Thousands of buildings were destroyed and thousands incurred damage ranging from significant to minor. We won't know for a long time how many damaged buildings are determined to meet the threshold for substantial damage, the "50 Percent Rule."

Economic Context

During 2020-2021, the Naples/Marco Island real estate markets experienced rapid value increases driven by high demand from people relocating to southwest Florida. Appraisers could not rationalize the prices being paid for some recently renovated residential real estate. In some cases, existing buildings were apparently selling for more than what similar buildings would cost to build all new. In late winter and early spring, market activity dissipated, and in most neighborhoods asking prices fell. Real estate market conditions were influenced by:

- A two-year run of high demand for existing single-family homes
- Premium prices paid for existing units
- Very few land sales
- A following period of very little market activity

And then Hurricane Ian roared past.

Construction Costs

Southwest Florida has enjoyed an extended period of growth and redevelopment. But that also means construction costs are relatively high and labor is expensive. Covid-related supply chain issues and labor shortages resulted in construction cost increases that were aggravated by a period of increased demand. It has been challenging for appraisers to keep up with cost increases. Appraisers who prepare Actual Cash Value estimates of market value need to know current construction costs because ACVs start with developing costs to reproduce a building (which FEMA guidance calls "in-kind") and then depreciating that cost estimate. I subscribe to an excellent cost service, but the updates are quarterly, and the lag can be as much as 4 ½ months for the service to compile and publish an update. The last quarterly update indicated an 8% cost increase. It'll be another few months before the update takes into account the post-disaster effects on costs.

Post-Disaster ACV Appraisals

There will be hundreds, perhaps thousands, of SI/SD determination appraisals to make before Florida's flooded communities can recover. Given the local economic context described above, let's examine how ACV appraisals stack up against traditional market value appraisals in the post-disaster period.

- ACV Appraisals Are Easy to Make – The ACV appraisal methodology is simple and direct. ACV equals the Reproduction Cost New minus Physical Deterioration. ACV is only about the building, which means most of the work involved in developing a traditional, whole-property market value appraisal is not required.

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- ACV Appraisals Are Easy to Use – Traditional, whole property market value appraisal reports are typically written on a form intended for other appraisal assignments, full of information not pertinent for SI/SD purposes. Also, appraisal reports seldom include documentation sufficient to support the conclusions reached. Floodplain administrators tell me ACV appraisal reports are easy to read and understand. That means it is quicker and easier for them to make SI/SD determinations, and that facilitates permit processing, a key to disaster recovery.
- ACV Appraisals Avoid the Forbidden Value Associated with Use or Occupancy – Remember what I said above about real estate market conditions in southwest Florida before Hurricane Ian? There were very few land sales and buyers were paying a premium for existing homes. Most of those homes were non-conforming, but people were willing to “overpay” to get a place they could move into. Those are exactly the conditions that create the excess value associated with use or occupancy that FEMA says must not be considered (Section 4.5.1 in the SI/SD Desk Reference, FEMA P-758). ACV appraisals never include those excess value components.
- ACV is a Calculation, Not Opinion – There’s lots of “wiggle room” in a traditional, whole property market value appraisal. By the time the traditional appraisal process is complete the appraiser has built up the market value and then for SI/SD purposes, has to tear it down to just the part that is the building. Both the building up and the tearing down are subject to judgment and error. Not so ACV. The ACV method is less complex and reasonable conclusions can be adequately supported by appraisal report documentation.
- ACV Works for Every Building Type – Traditional, whole property market value appraisals depend on analysis of comparable sales. Some building types almost never have comparables because they never sell (think institutional, agricultural, government buildings, ancillary structures, guest houses, etc.). An ACV appraisal is cost-based, which means it works for every building type.

Strictly From My Soap Box

Watching a disaster unfold is unpleasant. Watching the long, slow recovery, and participating by preparing appraisals for SI/SD determinations, is also difficult. Damaged communities and the people in them are real.

From my perspective there is a glaring inequity in the Substantial Damage determination process. The appraisal effective date for repair of damage appraisals in SW Florida associated with Hurricane Ian is September 27, 2022, the day before the storm. ACV appraisal reproduction cost estimates reflect conditions immediately before the storm. However, repairs will be made post-disaster in a different cost environment. Local contractors tell me that the post-disaster cost of materials and labor is up, probably 10% to 15%. That is a function of supply and demand, not price gouging. The effect is that damage will be repaired at a stepped-up cost basis, so that post-disaster we don’t have a 50 Percent Rule, we have a 40 Percent Rule or maybe it’s 35 Percent Rule. This effect is particularly harmful to workforce and affordable housing components. This is an area of regulation that deserves reconsideration.

Submit comments and suggestions for future MV Supplement topics to Rayman4454@gmail.com.

A banner for the ASFPM Career Center. On the left, there is a photograph of a modern multi-story building. The main background is white with a dark blue vertical bar on the left. The text "ASFPM CAREER CENTER" is prominently displayed in dark blue. Below it, there are two phrases: "find a job" and "post a job", each followed by a checkmark. At the bottom, the URL "floods.org/career-center/jobs/" is written in blue. On the right side, there is a decorative graphic of a grid of dots in the shape of a triangle, with one dot highlighted in a larger, shaded circle.

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