

KANSAS FLOODPLAIN MANAGEMENT TIPS



June 2022

Kansas Association of Code Enforcement Conference

The Kansas Association of Code Enforcement (KACE) is an organization that educates and advances the practice of code enforcement in Kansas. They provide training workshops, disseminate materials, and develop programs on the enforcement of environmental, housing, and land use laws. KACE was formed in the early 1990s.

KACE had their annual conference this past April in Hays, Kansas.

Presentations throughout the conference included team tactics with a focus on animal care and control where attendees went through case studies. A presentation on effective communication asked attendees to examine hypothetical scenarios with difficult residents and share past experiences in their communities. A presentation on legal aspects of code administration helped officials to avoid legal issues in their work and identified what to watch out for. The Heart of America Chapter of the International Code Council was also part of the conference, with separate and concurrent training concerning building codes.

Presentations included topics such as building instructions, electrical inspections, structural basics, and decks. The conference included a social hour in downtown Hays. The 2023 conference details have not yet been set.



Presentation at KACE Conference

Kansas Association of County Planning and Zoning Officials

The Kansas Association of County Planning and Zoning Officials (KACPZO) is an organization that promotes community improvement, capacity building, and the process of planning and zoning in Kansas. The association was formed in 2014. Their annual conference was held this past April in Mulvane, Kansas.

Presentations were given on comprehensive plans, community land use regulations, easements, plat reviews, deeds, cases going to court, public hearings, and trusts. After the presentations, a social hour and dinner was provided at the Fire Club at the Kansas Star Event Center in Wichita. The 2023 conference details have not been set yet.



Attendees and organizers for the KACPZO Conference

In this bulletin...

- KACE Conference
- KACZPO Conference
- Floodplain Variances
- Announcements
- Learning Opportunities
- Training Registration Form

Floodplain Variances

Every community that participates in the National Flood Insurance Program has a floodplain manager and has agreed to enforce rules and regulations in the floodplain. These rules and regulations are in ordinances in cities, resolutions at the county level, or combined into a local set of codes or zoning regulations. When a property owner disagrees with the floodplain manager's determination that a development in the floodplain does not meet the requirements of the floodplain regulations, that property owner has the right to request a variance.

In simple terms, a variance is authorization for development in the floodplain that does not meet the requirements of the community's floodplain regulations. Applying for variances is a lengthy process. Variances must be approved by a locally appointed floodplain management appeal board. That appeal board should not approve a variance unless some very specific criteria are met. It is essential that your local appeal board has a thorough understanding of those criteria.

Appeal boards must not approve variances without considering all relevant factors including:

- Danger to life and property due to flood damage.
- Danger that materials may be swept onto other lands to the injury of others.
- Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- Importance of the services provided by the proposed facility to the community.
- Necessity of the facility to have a waterfront location, where applicable.
Availability of alternative locations, not subject to flood damage, for the proposed use.
- Compatibility of the proposed use with existing and anticipated development.
- Relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- Safety of access to the property in times of flood for ordinary and emergency vehicles.
- Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site.
- 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; streets; and bridges.

After considering those relevant factors the Appeal Board should only approve a variance when:

- There is good and sufficient cause.
- An exceptional hardship exists.
- The variance will not result in threats to public safety, extraordinary public expense, or victimization of the public.
- The variance is the minimum action necessary to afford relief.

Only consider conditions of the property and not of the property owner. An exceptional hardship involves unique circumstances of the property that make it impossible to develop the property in compliance with the floodplain regulations. An exceptional hardship should have nothing to do with the people involved.

Requests often reflect hardships of the people involved. For example, one Kansas resident asked for a variance because the expense of complying with substantial damage requirements and elevating the structure would have to come from his son's college fund. Another case occurred when a realtor sold a vacant lot in the floodplain and a single wide manufactured home to an elderly woman, but the work was done without a permit and the manufactured home was not elevated appropriately. The realtor asked for a variance because it would be a hardship on the owner to walk up the steps to get into the elevated building because of her bad hip. While sympathetic to an individual's unique circumstances, floodplain managers

must remind their appeal boards that variances are granted to the *property* and stay with the *property* and are not granted to the people involved. The appeal board must focus on the circumstances related to the property and the use, not the circumstances of the person requesting the variance.

There have been cases when a new structure was built in the floodplain without proper permits and did not meet required elevation or flood protection requirements. Floodplain managers from local communities sent notices of the violation. It is not uncommon for violators in that situation to say they will just get a variance.

There are good reasons for not approving a variance in a situation where a problem is not caused by any condition of the property but instead was caused by the developer's own actions in failing to apply for proper permits. Cause for the variance should not be applicant's own actions. Properties that have been granted variances could be sold to someone else. The new buyer may not know that a property has a variance and only know it was approved and permitted by the local community.

Variances are relief from the requirements of the local community's floodplain management regulations. Variances issued at the local level are not variances from mandatory purchase of flood insurance requirements. Upon granting of a variance, the community must notify the applicant in writing and explicitly state over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood level increases risks to life and property. Will the owner of a property with a variance that has expensive insurance always inform a new buyer of the circumstances? While Risk Rating 2.0 has changed how insurance is rated, including the disuse of base flood elevation from premium determination, first floor height is a rating variable.

Variances do not grant relief from requirements of state and federal requirements that may also apply. The Kansas Department of Agriculture Division of Water Resources (DWR) permits many types of development in the floodplain. A local community should not grant a variance for a property that is in violation of state permit requirements. Appeal boards may want to table requests for variances until the applicant can provide documentation of a permit determination by DWR. Why grant a variance for something that may have to be removed or altered to comply with a higher standard at state or federal level?

Variances shall not be issued within any designated floodway if any increase in flood discharge would result. This means that a no-rise encroachment study by a professional engineer would have to be done before applying for a variance. Without the study, an appeal board does not know if an increase would result. There have been cases where a developer inappropriately wanted to ask for a variance from the requirement for no-rise certificate to avoid the expense of hiring an engineer.

There have been cases when variances have been approved in local communities here in Kansas. One approved variance was for a boat house. Boats require access to water and that water is usually found in a floodplain. This would be a functionally dependent use because of the fact that boats can't function without water. It is also appropriate to consider a variance for repair of structures listed on a historic registry. Remember that just because a building is old does not mean it is a historic building. It must be listed on an approved historic registry.

Decisions of the appeal board aren't always the final word. Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the district court as provided in K.S.A. 12-759 and 12-760.

To learn more about variances, read the variance section of your own community's floodplain management regulations. The Federal Emergency Management Agency publication FEMA P-993 dated July 2014, "Floodplain Management Bulletin, Variances and the National Flood Insurance Program," is a 32-page book that explains variances and variance criteria in more detail. Order free copies of this book by calling 1-800-480-2520. Consider giving a copy of the variance book to every member of your floodplain appeal board.

Training Opportunities

USACE Nonstructural Floodproofing Workshop, Garnett, Ks

Wednesday, July 20, 2022, from 9:00 A.M.-1:00 P.M.

The Kansas Department of Agriculture - Division of Water Resources will host this free seminar with assistance from the U.S. Army Corps of Engineers. This course has been approved for 5 hours of Continuing Education Credit for Certified Floodplain Managers and is limited to 25 participants.

Brian Rast P.E., CFM, PMP and Eric Lynn, P.E. of the U.S. Army Corps of Engineers will be the instructor for this class. It will focus on various risk management options that can be used to protect residential and commercial buildings from flooding. Participants will learn about methods such as elevation, relocation, and floodproofing. Additional topics include flood warning systems and emergency action plans. The class includes both classroom and field data collection components.

Please register at the link: <https://fs22.formsite.com/KansasDeptAg/Nonstructural/index.html>

Students will be notified of the classroom, field trip locations, and other information after registration. Limited to 25 Participants.

Forerunner is offering the following Community Webinar Series on June 15th, 12:00 P.M. CT:

Using Data to Examine the Impacts of Risk Rating 2.0 on Mitigation Planning in New Orleans, would be a great opportunity to share with the Kansas State FPM mailing list to learn about the impacts of floodplain management policy reform and what can be learned for their own communities. We will also be offering 1 CEC for floodplain managers so this is a great opportunity to learn and earn! Webinar abstract is below:

The City of New Orleans applied FEMA's 2018 NFIP Affordability framework at a local resolution to evaluate the affordability of flood insurance in New Orleans, Louisiana. The city is home to almost 400,000 people and continues to grapple with the legacy of Hurricane Katrina. Compounding this, a history of inequity in policy development has created disproportionate access to resources and these factors have exposed layered harm that directly impacts underserved communities. To better understand the implications of recent shifts in flood insurance, the city utilized a range of datasets to consider how affordability issues associated with RR 2.0 will affect local mitigation and climate adaptations programs. Austin Feldbaum, New Orleans' Hazard Mitigation Administrator, will join us for this webinar to highlight some of the ways the city been using NFIP data, flood maps, and other local datasets to understand the scope of flood mitigation work in his community. He will apply concepts of equity and social vulnerability to forecast data on Risk Rating 2.0. Attendees will be a part of a discussion to further understand how communities can leverage data to get a better understanding of the impacts of policy reform and/or shifts in flood insurance on residents.

Link to register: https://us02web.zoom.us/webinar/register/1616286353420/WN_kxuYDpp2TqeJr9y1myryjg

Find more information about floodplain management from Kansas Department of Agriculture
Division of Water Resources online at:

<http://agriculture.ks.gov/divisions-programs/dwr/floodplain>

Email saves money on postage. The electronic newsletter also has links and the photos are in color. In the case that you are getting this newsletter by postal mail and would prefer email please contact Cheyenne Sun Eagle at: cheyenne.suneagle@ks.gov.

To find and register for upcoming training, as well as recordings of previous trainings, please see our new
Floodplain Management Training webpage at:

<https://agriculture.ks.gov/divisions-programs/dwr/floodplain/training>

Kansas Department of Agriculture
Division of Water Resources
Floodplain Program
Training Registration Form

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

E-mail _____

Name, date and location of training you will attend _____

*Please share this invitation with anyone else who could benefit from the training.

**Classroom locations will be sent to registered participants one week before the training.

**To find and register for upcoming training, as well as recordings of previous trainings, please see our new Floodplain Management Training webpage at: <https://agriculture.ks.gov/divisions-programs/dwr/floodplain/training>

** Any individual with a disability may request accommodation in order to participate in training. Persons who require special accommodations must make their needs known at least five working days prior to training. For more information, including special accommodations, please contact Cheyenne Sun Eagle at 785-296-0854 or by email Cheyenne.Suneagle@ks.gov.

Please scan and email your registration to: cheyenne.suneagle@ks.gov

Or mail to:

KANSAS DEPARTMENT OF AGRICULTURE
FLOODPLAIN MANAGEMENT PROGRAM
1131 SW Winding Road, Suite 400
TOPEKA, KS 66615

For questions about training, please contact Cheyenne Sun Eagle by email at cheyenne.suneagle@ks.gov or by phone at 785-296-0854. You may also contact Steve Samuelson by email at steve.samuelson@ks.gov or by phone at 785-296-4622.

Please help us keep our records current. If the name that appears on this newsletter is for an individual no longer with your organization, please call 785-296-0854 or email cheyenne.suneagle@ks.gov to report the change.

Kansas Department of Agriculture
Division of Water Resources
Topeka Field Office
Floodplain Management
1131 SW Winding Road, Suite 400
Topeka, KS 66615

Kansas Association For Floodplain Management Conference in Lawrence

The 2022 KAFM Conference will be August 31-September 1, at the Double Tree by Hilton in Lawrence, Kansas.

Association of State Floodplain Managers 2023 Conference in Raleigh

The 2023 ASFPM Conference will be May 7-11, in Raleigh, North Carolina.

**KDA/DWR Water Structures
Floodplain Program Staff**

Steve Samuelson, CFM, NFIP Coordinator	785-296-4622	steve.samuelson@ks.gov
Tara Lanzrath, CFM, Floodplain Mapping Coordinator	785-296-2513	tara.lanzrath@ks.gov
William Pace, CFM, Floodplain Mapping Specialist	785-296-5440	william.pace@ks.gov
Joanna Rohlf, CFM, Floodplain Mapping Specialist	785-296-7769	joanna.rohlf@ks.gov
Cheyenne Sun Eagle, CFM, NFIP Specialist	785-296-0854	cheyenne.suneagle@ks.gov

Mailing Address:
1131 SW Winding Road, Suite 400
Topeka, KS 66615

<http://agriculture.ks.gov/dwr>