WORKSHOP MEETING
BOARD OF COMMISSIONERS
TOWN OF REDINGTON SHORES
WEDNESDAY, FEBRUARY 22, 2023 – Immediately Following the Special Meeting
AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPEARANCES AND PRESENTATIONS
None

OLD BUSINESS
None

NEW BUSINESS
1. FEMA 50% Rule
2. Verbiage Clarification on the Commissioner Policy Manual

MISCELLANEOUS
Regular Meeting – Wednesday, March 8, 2023 – 6:00 p.m.
Workshop Meeting- Wednesday, March 29, 2023 – 2:00 p.m.

ADJOURNMENT

"Persons are advised that, if they decide to appeal any decisions made at this meeting, they will need a record of the proceedings, and, for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based."

"The Town maintains a tape recorder for all public hearings. In the event that you wish to appeal a decision, the tape may or may not adequately ensure a verbatim record of the proceedings. Therefore, you may wish to provide a court reporter at your expense."

3 NFIP Substantial Improvement/ Substantial Damage: Requirements and Definitions

3.1 Overview

This chapter provides NFIP regulations for substantial improvement and substantial damage, and includes key definitions for implementing the SI/SD requirements (also see the glossary and acronyms in Appendix C). This chapter also compares the NFIP's terminology with terms and definitions used in the I-Codes.

3.2 Introduction to the SI/SD Requirements

The NFIP includes a requirement that new buildings and substantially improved buildings be constructed in ways that minimize or prevent damage during a flood. This requirement grew out of the recognition that there were large numbers of buildings already located in flood-prone areas that would continue to be subject to damage.

The purpose of the SI/SD requirements is to protect the property owner's investment and safety, and, over time, to reduce the total number of buildings that are exposed to flood damage, thus reducing the burden on taxpayers through the payment of disaster assistance. The SI/SD requirements are triggered when the local official determines that the cost of repairing or improving a building in an SFHA equals or exceeds 50 percent of the building's market value (excluding land value).

The SI/SD requirement is similar to common zoning and code requirements that address non-conforming uses and structures. The non-conformance is allowed to continue until a triggering event occurs, such as a change in use or a proposal to undertake significant physical alterations.

Types of work that may trigger SI/SD requirements are described in detail in Chapter 6 and generally include:

- Rehabilitation or remodeling of a building with or without modifying its external dimensions
- Lateral additions that may or may not involve structural modifications of a building
- Vertical additions
- Repair of foundations, including replacing or extending foundations

Understandably, owners are concerned about the costs of bringing buildings into compliance. NFIP flood insurance policies on buildings located in SFHAs include coverage that is available for buildings that are substantially damaged by flood. Called Increased Cost of Compliance (ICC), this coverage is described in Sections 5.6.4 and 7.6.

- Restoration or repair of damage of any origin that is necessary to restore a building to its pre-damaged condition
- Reconstruction of demolished or destroyed buildings on the same site or on the same foundation
- Work on post-Flood Insurance Rate Map (FIRM) buildings
- Work on existing buildings where flood zones or floodways are revised

The intent of the SI/SD requirements is not to discourage routine maintenance. If work requires a permit, then the local official must review all of the work proposed and the cost of all work must be included in the project costs, including work that might otherwise be considered routine maintenance.

Chapter 6 describes how building characteristics and details of proposed work relate to the SI/SD requirements of local floodplain management regulations.

3.3 NFIP Regulations for SI/SD

The NFIP regulations are online at http://www.fema.gov/business/nfip/laws1.shtm. The following excerpts of the regulations pertain to new construction and substantial improvement. The requirements state that communities shall:

> *§ 60.3(a)(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) be 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, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damage, and (iv) be 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;*
>
> *§ 60.3(b)(4) Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to paragraph (b)(3) of this section, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the community's FHBM or FIRM meet the standards in paragraphs (c)(2), (c)(3), (c)(5), (c)(6), (c)(12), (c)(14), (d)(2) and (d)(3) of this section;*
>
> *§ 60.3(c)(2) Require that all new construction and substantial improvements of residential structures within Zones A1-30, AE and AH zones on the community's FIRM have the lowest floor (including basement) elevated to or above the base flood level, unless the community is granted an exception by the Administrator for the allowance of basements in accordance with § 60.6 (b) or (c);*
>
> *§ 60.3(c)(3) Require that all new construction and substantial improvements of non-residential structures within Zones A1-30, AE and AH zones on the community's FIRM (i) have the lowest*

floor (including basement) elevated to or above the base flood level or, (ii) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

§ 60.3(c)(5) Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which 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 meet or exceed the following minimum criteria: 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. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;

§ 60.3(c)(6) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites

(i) Outside of a manufactured home park or subdivision,

(ii) In a new manufactured home park or subdivision,

(iii) In an expansion to an existing manufactured home park or subdivision, or

(iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement.

§ 60.3(c)(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified);

§ 60.3(c)(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of non-residential structures (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified), or (ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in § 60.3(c)(3)(ii);

§ 60.3(c)(10) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, 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 water surface elevation of the base flood more than one foot at any point within the community.

§ 60.3(c)(12) Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A-1-30, AH, and AE on the community's FIRM that are not subject to the provisions of paragraph (c)(6) of this section be elevated so that either :

(i) The lowest floor of the manufactured home is at or above the base flood elevation, or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

§ 60.3(d) [When floodways have been designated] *(3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge;*

§ 60.3(e)(4) [When V zones have been designated] *Provide that all new construction and substantial improvements in Zones V1-30 and VE, and also Zone V if base flood elevation data is available, on the community's FIRM, are elevated on pilings and columns so that (i) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and (ii) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable State or local building standards. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of paragraphs (e)(4) (i) and (ii) of this section.*

§ 60.3(e)(5) Provide that all new construction and substantial improvements within Zones V1-30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. [Note: specifications for breakaway walls not shown.]

3.4 Selected Definitions and Terms

Some of the terms used in this Desk Reference are defined in the NFIP regulations and some have meanings that are based on common usage. This section compares the NFIP terms with those defined and used in the administrative and flood damage-resistant provisions of the family of building codes known as the I-Codes. The I-Codes include the *International Building Code* (IBC) *International Residential Code* (IRC), *International Existing Building Code* (IEBC),

International Mechanical Code®, *International Plumbing Code®*, *the International Fuel Gas Code®*, and a number of other specialty codes.

3.4.1 Definitions: NFIP Regulations

The following are the NFIP definitions of several terms used in this Desk Reference (also see Appendix C for a glossary of related terms and definitions):

- **Floodproofing** means *any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.*
- **Historic structure** means 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 the Interior in states without approved programs.

- **Lowest floor** means *the lowest floor of the lowest enclosed area (including basement). An unfinished or flood damage-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 non-elevation design requirements of § 60.3.*
- **New construction** means, *for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.*
- **Substantial damage** means *damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.*
- **Substantial improvement** means *any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:*

(1) Any project for improvement of a structure to correct existing violations 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

(2) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

The definition of substantial improvement includes structures that have incurred substantial damage. Work necessary to restore a substantially damaged building to its pre-damage condition constitutes a substantial improvement; therefore, the NFIP regulations that refer to substantial improvement also include substantial damage.

3.4.2 Comparison of Definitions and Terms: NFIP and I-Codes

FEMA has determined that the provisions in the I-Codes for the design and construction of flood damage-resistant buildings are consistent with the NFIP requirements. Adoption of a code based on one or more of the I-Codes does not, by itself, meet all of the NFIP requirements, largely because the model codes deal primarily with buildings and structures. To learn more about coordinating local floodplain management regulations with the I-Codes, contact the NFIP State Coordinating Agency or FEMA Regional Office listed in Appendix A. The International Code Council, in coordination with FEMA published *Reducing Flood Losses Through the International Codes®: Meeting the Requirements of the National Flood Insurance Program* for additional guidance.

Many States and communities administer building codes that are based on the model I-Codes. Because the model codes include provisions for SI/SD and local regulations also include SI/SD provisions, it is important to compare terms. In communities that use both codes and regulations to regulate SFHA development, officials need to be familiar with terms used in each, and recognize that some terms are used in one but not the other. Some terms are defined while others are simply used in context with their common meaning. Table 3-1 compares terms that are defined or used by the NFIP with terms used in the I-Codes. Some terms (noted "used in guidance documents") are not defined by the NFIP, but are used in this Desk Reference and various guidance documents listed in Appendix B.

Table 3-1. Comparison of Definitions and Terms in the NFIP and I-Codes

	NFIP	IBC	IRC	IEBC
Addition	Used in the NFIP definition of "substantial improvement." Common NFIP usage: an expansion of a building that increases the total square footage.	An extension or increase in floor area or height of a building or structure.	An extension or increase in floor area or height of a building or structure.	An extension or increase in floor area, number of stories, or height of a building or structure.
Addition, minor	Not defined in NFIP regulations; used in guidance documents. Common NFIP usage: an addition that, based on a determination, is not a "substantial improvement."	Not used in the IBC; included in definition of "Addition."	Not used in the IRC; included in definition of "Addition."	Not used in the IEBC; included in definition of "Addition."
Addition, lateral or horizontal	Not defined in NFIP regulations; used in guidance documents. Common NFIP usage: an addition that extends beyond the existing footprint. May be a minor addition or may be determined to be a "substantial improvement."	Not used in the IBC; included in definition of "Addition."	Not used in the IRC; included in definition of "Addition."	Not used in the IEBC; included in definition of "Addition."
Addition, vertical	Not defined in NFIP regulations; used in guidance documents. Common NFIP usage: an addition that extends a building upward, either by adding an upper story or by elevating the building in-place and constructing a new story underneath. May be determined to be a "substantial improvement;" less likely to be a minor addition.	Not used in the IBC; included in definition of "Addition."	Not used in the IRC; included in definition of "Addition."	Not used in the IEBC; included in definition of "Addition."

NFIP National Flood Insurance Program
IBC International Building Code
IRC International Residential Code
IEBC International Existing Building Code

Table 3-1. Comparison of Definitions and Terms in the NFIP and I-Codes (continued)

	NFIP	IBC	IRC	IEBC
Alteration	Not defined in NFIP regulations; used in the NFIP definitions "start of construction" and "historic structure." Used in NFIP guidance documents.	Any construction or renovation to an existing structure other than repair or addition.	Any construction or renovation to an existing structure other than repair or addition that requires a permit. Also, a change in a mechanical system that involves an extension, addition, or change to the arrangement, type, or purpose of the original installation that requires a permit.	Any construction or renovation to an existing structure other than a repair or addition. Alterations are classified as Level 1, Level 2, and Level 3.
Alteration, Level 1	Not used by the NFIP.	Not used in the IBC.	Not used in the IRC.	403.1 Scope. Level 1 alterations include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose. [Note: 601.3 requires alterations that constitute SI to comply with flood requirements of the IBC.]
Alteration, Level 2	Not used by the NFIP.	Not used in the IBC.	Not used in the IRC.	404.1 Scope. Level 2 alterations include the reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension of a system, or the installation of any additional equipment. (Level 2 alterations must comply with the requirements for Level 1 and Level 2.)
Alteration, Level 3	Not used by the NFIP.	Not used in the IBC.	Not used in the IRC.	405.1 Scope. Level 3 alterations apply where the work area exceeds 50 percent of the aggregate area of the building. (Level 3 alterations must comply with the requirements for Level 1, Level 2, and Level 3.)

Table 3-1. Comparison of Definitions and Terms in the NFIP and I-Codes (continued)

	NFIP	IBC	IRC	IEBC
Building, Elevated-in-Place	Not defined in NFIP regulations; used in guidance documents. Common NFIP usage: a building that is detached from its original foundation and reattached to a new elevated foundation at the same location.	Not used in the IBC (see Addition).	Not used in the IRC (see Addition).	Not used in the IEBC (see Addition).
Building, Existing	Not defined in NFIP regulations; used in guidance documents. NFIP usage: a building that pre-dates the community's first floodplain management regulation (see Pre-FIRM).	[Existing structure means] A structure erected prior to the date of adoption of the appropriate code, or one for which a legal building permit has been issued. See also Section 1612.2.	[Existing building means] Existing building is a building erected prior to the adoption of this code, or one for which a legal building permit has been issued.	[Existing building means] A building erected prior to the date of adoption of the appropriate code, or one for which a legal building permit has been issued.
Building, Relocated	Not defined in NFIP regulations; used in guidance documents. Common NFIP usage: a building that is detached from its original foundation and moved to another location with a new foundation.	Not used in the IBC; scope of IBC includes the movement of buildings.	Not used in the IRC; scope of IRC includes movement of buildings.	409.1 Scope. Relocated buildings provisions shall apply to relocated or moved buildings. [1202.6 requires relocated buildings to comply with the flood requirements of the IBC.]
Habitable (Habitable Space)	Not defined in NFIP regulations; used in guidance documents. Uses allowed for enclosures below the base flood elevation include parking of vehicles, building access, and storage.	A space in a building for living, sleeping, eating, or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces. [Note: habitable spaces are not all equivalent to the uses allowed below the elevated buildings in SFHAs.]	A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces. [Note: habitable spaces are not all equivalent to the uses allowed below the elevated buildings in SFHAs.]	Terms not defined in the IEBC; default to definitions in the IBC.

Table 3-1. Comparison of Definitions and Terms in the NFIP and I-Codes (continued)

	NFIP	IBC	IRC	IEBC
Non-residential	Not defined in NFIP regulations. Used in NFIP regulations and guidance documents; see "Residential."	All occupancies other than "Institutional Group I," "Residential Group R," and dwellings within the scope of the IRC (see "Residential"). [Note: From *ASCE 24-05*, Non-residential – any building or structure or portion thereof that is not classified residential.]	The scope of the IRC includes only "detached one- and two-family dwellings and townhouses not more than three stories above-grade in height with a separate means of egress and their accessory structures."	Terms not defined in the IEBC default to definitions in the IBC.
Pre-FIRM	A building for which construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of an initial FIRM.	Not used in the IBC.	Not used in the IRC.	Not used in the IEBC.
Post-FIRM	A building for which construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial FIRM, whichever is later.	Not used in the IBC.	Not used in the IRC.	Not used in the IEBC.
Reconstruction	Not defined in NFIP regulations; used in the NFIP definition of "Substantial Improvement." Common NFIP usage: rebuilding on same foundation. Another common usage refers to ground-up reconstruction, including a new foundation. In both, the new building is treated as new construction.	Used in the IBC definition of "Repair."	Used in the IRC definition of "Repair."	Used in the IEBC definition of "Repair."
Rehabilitation	Not defined in NFIP regulations; used in the NFIP definition of "Substantial Improvement." Common NFIP usage (including "remodel") to describe work that does not increase square footage.	Used only in the IBC flood damage-resistant provisions	[Appendix J, Existing Buildings and Structures] Any repair, renovation, alteration or reconstruction work undertaken in an existing building. Used in the IRC flood damage-resistant provisions.	Any work, as described by the categories of work defined herein, undertaken in an existing building.

Table 3-1. Comparison of Definitions and Terms in the NFIP and I-Codes (continued)

	NFIP	IBC	IRC	IEBC
Renovation	Not defined in NFIP regulations; used in guidance documents. Dictionary definition is "to restore to a former better state (as by cleaning, repairing, or rebuilding)."	Used in the IBC definition of "Alteration."	Used in the IRC definition of "Alteration."	Used in the IEBC definition of "Alteration."
Repair	Not defined in NFIP regulations; used in the NFIP definition of "Substantial Improvement." Dictionary definition includes (a) act or process of repairing; (b) to restore by replacing a part or putting together what is torn or broken.	The reconstruction or renewal of any part of an existing building for the purpose of its maintenance.	The reconstruction or renewal of any part of an existing building for the purpose of its maintenance.	The restoration to good or sound condition of any part of an existing building for the purpose of its maintenance. 402.1 Scope. Repairs, as defined in Chapter 2, include the patching or restoration or replacement of damaged materials, elements, equipment or fixtures for the purpose of maintaining such components in good or sound condition with respect to existing loads or performance requirements.

Table 3-1. Comparison of Definitions and Terms in the NFIP and I-Codes (continued)

	NFIP	IBC	IRC	IEBC
Residential	Used (but not defined) in the NFIP regulations and guidance documents.	308 Institutional Group I. Institutional Group I includes, among others, the use of a building or structure, or a portion thereof, in which people are cared for or live in a supervised environment, having physical limitations because of health or age are harbored for medical treatment or other care or treatment, or in which people are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. 310.1 Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *International Residential Code* in accordance with Section 101.2. Residential occupancies shall include the following: *[NOTE: list that follows is not shown.]*	R101.2 Scope. The provisions of the *International Residential Code for One- and Two-family Dwellings* shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above-grade in height with a separate means of egress and their accessory structures.	Terms not defined in the IEBC; default to definitions in the IBC.

Table 3-1. Comparison of Definitions and Terms in the NFIP and I-Codes (continued)

	NFIP	IBC	IRC	IEBC
Residential (continued)		*[NOTE: The term "residential is defined in ASCE 24-05, Residential* – (1) buildings and structures and portions thereof where people live, or that are used for sleeping purposes on a transient or non-transient basis; (2) residential structures, including but not limited to one- and two-family dwellings, townhouses, condominiums, multi-family dwellings, apartments, congregate residences, boarding houses, lodging houses, rooming houses, hotels, motels, apartment buildings, convents, monasteries, dormitories, fraternity houses, sorority houses, vacation timeshare properties; and (3) institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers, convalescent facilities, hospitals, nursing homes, mental hospitals, detoxification facilities, prisons, jails, reformatories, detention centers, correctional centers, and prerelease centers.]		

Table 3-1. Comparison of Definitions and Terms in the NFIP and I-Codes (continued)

	NFIP	IBC	IRC	IEBC
Restoration	Used in the NFIP definition of "Substantial Damage." Dictionary definition includes (a) an act of restoring or the condition of being restored; (b) bringing back to a former position or condition.	Used in the definition of "Historic structures" and requirements for historic buildings.	Not used in the IRC.	Used in the IEBC definition of "Repair."
Story	Not used in the NFIP regulations. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood damage-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 non-elevation design requirements of Section 60.3.	That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above (also see "Mezzanine" and Section 502.1). It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters.	That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.	Terms not defined in the IEBC; default to definitions in the IBC.

4 Making Substantial Improvement and Substantial Damage Determinations

4.1 Overview

Administering the SI/SD requirements requires local officials to perform four major actions: (1) determine costs, (2) determine market values, (3) make SI/SD determinations, and (4) require owners to obtain permits to bring substantially improved or substantially damaged buildings into compliance with the floodplain management requirements. This chapter describes how to determine whether work is a substantial improvement or a repair of substantial damage. The first step is to review estimates of the improvement or repair costs; this step involves deciding which costs to include and exclude. Next, the market value of the structure must be determined. There is more than one way to determine costs and market value, and the local official must examine both for reasonableness and accuracy.

> The I-Codes include, in the administrative provisions, two requirements pertinent to the data necessary to make SI/SD determinations. Applicants must:
>
> - State the valuation of proposed work, and
> - Give other data and information as required by the building official.

Communities must be prepared to explain to permit applicants how they make SI/SD determinations. Local officials should develop written procedures that can help them make and document consistent determinations and improve efficiency, especially in the post-disaster period when large numbers of buildings may be damaged.

Chapter 5 outlines community responsibilities that are specifically related to administering these SI/SD requirements. Chapter 6 describes factors to consider when evaluating permit applications and all aspects of bringing substantially improved and substantially damaged buildings into compliance; it also includes illustrations of improvements and repairs.

Chapter 7 addresses handling substantial damage in the post-disaster period, with recommendations for planning ahead to be prepared for the added workload and demands on staff and resources. It describes some methods that can help communities focus their efforts when many damaged buildings may have to be evaluated. It also describes FEMA's *Substantial Damage Estimator* (SDE) software that communities can use to collect information about damaged buildings in order to make substantial damage determinations.

4.2 Accuracy and Verification

Costs of proposed repairs or improvements and market values are needed to determine whether proposed work is SI/SD. Methods for obtaining this information are described in Sections 4.4 and 4.5, respectively. Local officials are responsible for verifying that the data are complete and reasonable. The local official is responsible for reviewing the validity of all cost estimates provided by applicants, whether prepared by licensed contractors, engineers, architects, professional cost estimators, or by property owners. When work is repair of damage, an inspection visit should be made to verify that the proposed work is all of the work that is necessary to restore the building to its pre-damage condition.

Applicants may disagree with a community's SI/SD determination. In these cases, the burden is on the applicant to provide improved cost estimates or to obtain a professional appraisal of market value. The local official is responsible for reviewing the new information. In some cases, applicants may seek a formal appeal of the local official's decision (Section 5.6.6).

To be consistent, local officials should document their decisions and the documentation should be retained in the community's permit records. A sample worksheet that can be used to document SI/SD determinations is included in Appendix D. Maintaining good records and documentation is especially critical if a community has elected to administer a cumulative SI/SD requirement (Section 5.7.3).

4.3 Making SI/SD Determinations

Work on buildings ranges from routine maintenance and minor repairs (which may not require permits) to work that costs more than 50 percent of a structure's market value. Local officials who are responsible for administering their floodplain management regulations or codes are responsible for determining whether work is SI/SD. Other entities, such as insurance claims adjusters, may make estimates of damage for purposes of adjusting damage claims. However, an adjuster's estimate must not be used to make SI/SD determinations because the estimates of damage that determine the amount of a claim payment may not include all of the costs to repair the building to its pre-damage condition.

Consistency is important. Communities should decide in advance how they will handle significant flood events and develop written procedures for making decisions. It is easier to defend SI/SD determinations if all applicants are treated the same, especially when many buildings have been damaged (see Chapter 7).

Figure 4-1 illustrates an overview of the steps in the SI/SD determination that are described in detail in this Desk Reference. Once the cost of the work and the market value of the structure have been determined, the local official must make a final determination. The work is SI/SD if the ratio of the cost of work to the market value equals or exceeds 50 percent:

$$\frac{\text{Cost of Improvement or Cost to Repair to Pre-Damage Condition}}{\text{Market Value of Building}} \geq 50\%$$

Communities may use a combination of sources for the data needed to make SI/SD determinations. For example, a community may make SI/SD determinations based on applicant-supplied costs of repairs or improvements and community-obtained market values.

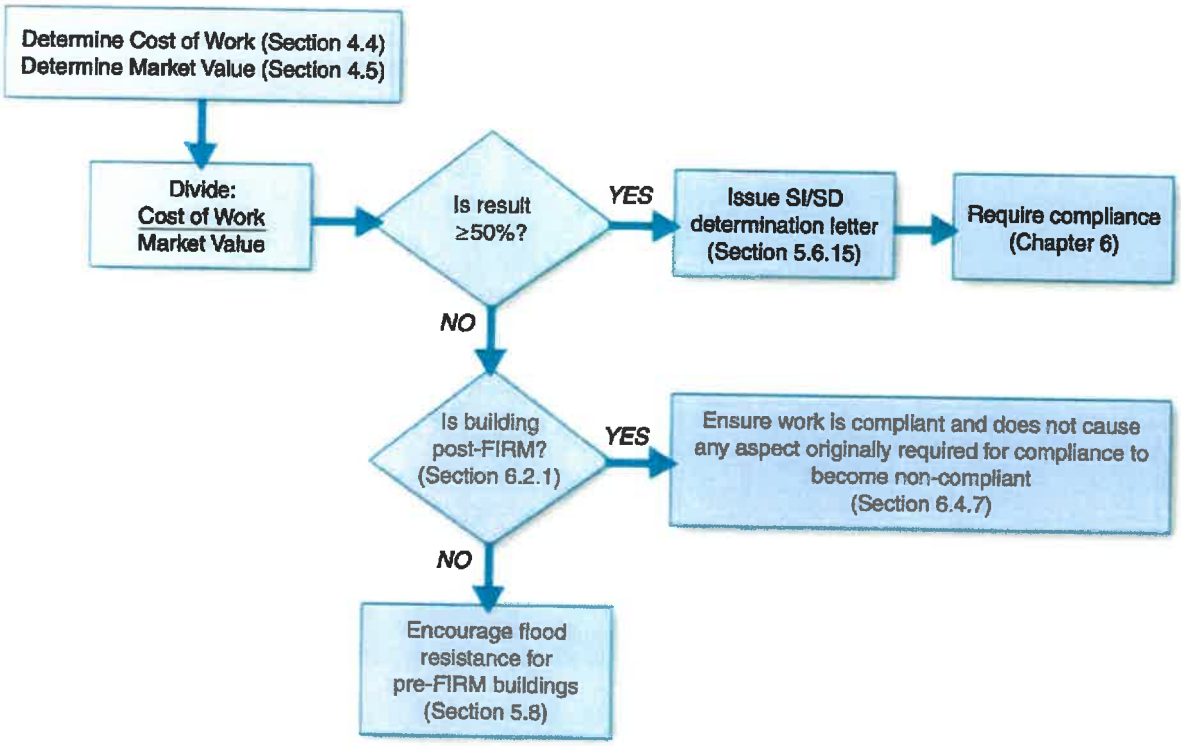

Figure 4-1. Make the SI/SD determination (overview)

4.3.1 SI/SD Provisions in the 2006 and 2009 I-Codes

The IBC and IRC apply to new construction and also to alteration, movement, enlargement, replacement, and repair of existing buildings. The IBC, the IRC, and the IEBC include SI/SD provisions that are consistent with the NFIP's requirements. The specific code provisions are described below:

- **IBC.** The IBC relies on the definitions of "substantial improvement" and "substantial damage" in Section 1612. The code official must determine whether any alteration, repair, or addition to existing buildings, or work associated with a change of occupancy or moved buildings, meets those definitions. Section 1612.1 states that "all new construction of buildings, structures, and portions of buildings and structures, including substantial improvement and restoration of substantial damage to buildings and structures, shall be designed and constructed to resist the effects of flood hazards and flood loads." In addition, the requirements for existing buildings, including historic buildings, are found in IBC Chapter 34.
- **IRC.** The IRC contains detailed administrative provisions in Chapter 1:
  - **R105.3.1.1 Substantially improved or substantially damaged buildings and structures in areas prone to flooding.** This section specifies that the building official shall examine

applications and prepare a finding with regard to the value of the proposed work. If the value equals or exceeds 50 percent of the market value of the building before the damage occurred or the improvement is started, the finding is provided to the board of appeals.

- **R112.2.1 Determination of substantial improvement in areas prone to flooding.** This section requires the board of appeals to determine if a proposal, referred to the board by the building official pursuant to Section R105.3.1.1, constitutes a substantial improvement (or repair of substantial damage). If the proposed work is found to be a substantial improvement or repair of substantial damage, the work must meet the requirements of Section R324 (Flood-Resistant Construction).

- **IEBC.** The IEBC is organized based on the nature of the work: repairs; repair of damaged buildings; alterations (Levels 1, 2, and 3); work associated with change of occupancy classification; additions (horizontal, vertical, new/raised foundations); and relocated or moved buildings. These characterizations of work are similar to those used in Chapter 6 (also see Table 3-1, which lists the definitions and terms used in the IEBC). The provisions of the IEBC that pertain to flood resistance are all triggered by a determination of whether the work constitutes a substantial improvement or a repair of substantial damage. When that occurs, the IEBC requires the building to be brought into compliance with the flood damage-resistant provisions of the IBC (located in IBC Section 1612). The IEBC also includes provisions for historic structures that are located in SFHAs.

4.4 Determining Costs of Improvements and Costs to Repair

The term "costs of improvements" includes the complete costs associated with all of the types of work that are described in Chapter 6. The term "costs to repair" includes the costs of all work necessary to restore a damaged building to its pre-damage condition. Both terms include the costs of all materials, labor, and other items necessary to perform the proposed work. Costs that must be included are described in Section 4.4.1 and certain costs that may be excluded are described in Section 4.4.2. Figure 4-2 illustrates the steps that local officials need to take in order to determine costs for making SI/SD determinations.

The term "substantial damage" refers to the repairs of all damage sustained and cannot reflect a level of repairs that is less than the amount of the damage sustained. If an owner does not intend to repair the damaged building right away or if the owner cannot afford to make all repairs immediately, the local official should inspect the property to determine whether, based on estimates, the work required to restore it to its pre-damage condition will constitute substantial damage. If this is the case, then the cost to repair is compared to the building's market value and the local official should provide written notice to the owner of the substantial damage determination. The local official should include in the written notice information about obtaining permits and about the floodplain management requirements that must be met. Further, sometimes these buildings also are improved beyond their pre-damage condition. If proposed, then the cost of improvements must be included along with the cost to repair to make the SI/SD determination. Note that the substantial damage requirement applies regardless of the cause of damage, such as wind or fire.

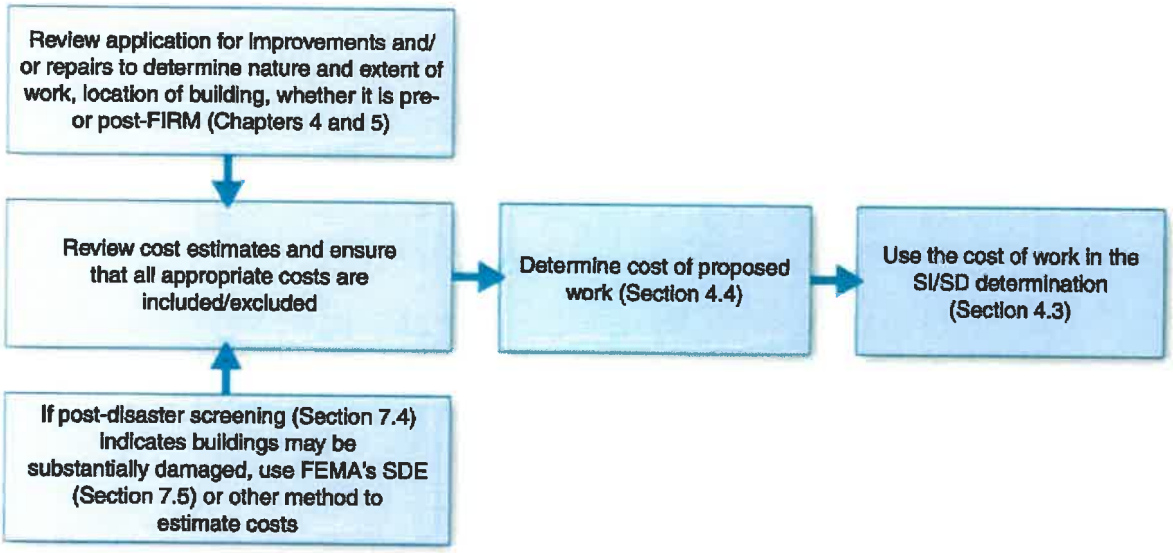

Figure 4-2. Determine the cost of work (overview)

The following topics related to determining costs will be covered in this section:

- Costs that must be included
- Costs that may be excluded
- Acceptable sources of cost information
- Estimates of donated or discounted materials
- Estimates of owner and volunteer labor
- Demolition, debris, and disposal
- Clean-up and trash removal
- Cost exclusions to correct existing health, safety, and sanitary code violations

Local officials will need to determine the necessary level of detail for the costs of improvements and costs of repairs from permit applicants or contractors in order to make a SI/SD determination.

4.4.1 Costs That Must be Included in SI/SD Determinations

Items that must be included in the costs of improvement and the costs to repair are those that are directly associated with the building. The following list of costs that must be included is not intended to be exhaustive, but characterizes the types of costs that must be included:

- Materials and labor, including the estimated value of donated or discounted materials (Section 4.4.4) and owner or volunteer labor (Section 4.4.5)
- Site preparation related to the improvement or repair (e.g., foundation excavation or filling in basements)
- Demolition and construction debris disposal (Section 4.4.6)

- Labor and other costs associated with demolishing, moving, or altering building components to accommodate improvements, additions, and making repairs
- Costs associated with complying with any other regulations or code requirement that is triggered by the work, including costs to comply with the requirements of the Americans with Disabilities Act (ADA)
- Costs associated with elevating a structure when the proposed elevation is lower than the BFE
- Construction management and supervision
- Contractor's overhead and profit
- Sales taxes on materials
- Structural elements and exterior finishes, including:
  - Foundations (e.g., spread or continuous foundation footings, perimeter walls, chain-walls, pilings, columns, posts, etc.)
  - Monolithic or other types of concrete slabs
  - Bearing walls, tie beams, trusses
  - Joists, beams, subflooring, framing, ceilings
  - Interior non-bearing walls
  - Exterior finishes (e.g., brick, stucco, siding, painting, and trim)
  - Windows and exterior doors
  - Roofing, gutters, and downspouts
  - Hardware
  - Attached decks and porches
- Interior finish elements, including:
  - Floor finishes (e.g., hardwood, ceramic, vinyl, linoleum, stone, and wall-to-wall carpet over subflooring)
  - Bathroom tiling and fixtures
  - Wall finishes (e.g., drywall, paint, stucco, plaster, paneling, and marble)
  - Built-in cabinets (e.g., kitchen, utility, entertainment, storage, and bathroom)
  - Interior doors
  - Interior finish carpentry
  - Built-in bookcases and furniture
  - Hardware
  - Insulation

- Utility and service equipment, including:
  - Heating, ventilation, and air conditioning (HVAC) equipment
  - Plumbing fixtures and piping
  - Electrical wiring, outlets, and switches
  - Light fixtures and ceiling fans
  - Security systems
  - Built-in appliances
  - Central vacuum systems
  - Water filtration, conditioning, and recirculation systems

4.4.2 Costs That May be Excluded from SI/SD Determinations

Items that can be excluded are those that are not directly associated with the building. The following list characterizes the types of costs that may be excluded:

- Clean-up and trash removal (Section 4.4.7)
- Costs to temporarily stabilize a building so that it is safe to enter to evaluate and identify required repairs
- Costs to obtain or prepare plans and specifications
- Land survey costs
- Permit fees and inspection fees
- Carpeting and recarpeting installed over finished flooring such as wood or tiling
- Outside improvements, including landscaping, irrigation, sidewalks, driveways, fences, yard lights, swimming pools, pool enclosures, and detached accessory structures (e.g., garages, sheds, and gazebos)
- Costs required for the minimum necessary work to correct existing violations of health, safety, and sanitary codes (Section 4.4.8)
- Plug-in appliances such as washing machines, dryers, and stoves

4.4.3 Acceptable Sources of Cost Information

The costs of improvements and the costs to repair are necessary to make the SI/SD determination. The following are acceptable methods to determine the costs:

- Itemized costs of materials and labor, or estimates of materials and labor that are prepared by licensed contractors or professional construction cost estimators.
- Building valuation tables published by building code organizations and cost-estimating manuals and tools available from professional building cost-estimating services. These sources can be used as long as some limitations are recognized, notably that there are local

variations in costs and the sources do not list all types and qualities of structures. These sources should not be used for structures that are architecturally unique, exceptionally large, or significantly different from the classes of structures that are listed.

- "Qualified Estimate" of costs that are prepared by the local official using professional judgment and knowledge of local and regional construction costs. This approach is most often used post-disaster when there are large numbers of damaged buildings and when permits must be quickly processed.
- Building owners may submit cost estimates that they prepare themselves. If the community is willing to consider such estimates, owners should be required to provide as much supporting documentation as possible (such as pricing information from lumber companies and hardware stores). In addition, the estimate must include the value of labor, including the value of the owner's labor (Section 4.4.5).

FEMA developed the *Substantial Damage Estimator*, summarized in Section 7.5, to provide estimates of building values and costs to repair. In general, this method is most often used in the post-disaster period when local officials need to inspect large numbers of damaged structures and make many substantial damage determinations.

4.4.4 Estimates of Donated or Discounted Materials

To help make improvements or repairs to damaged homes, some organizations and individuals donate materials, and some companies donate or provide materials at a discount. The value placed on all donated or discounted materials should be equal to the actual or estimated cost of such materials and must be included in the total cost. Where materials or servicing equipment are donated or discounted below normal market values, the value should be adjusted to an amount that would be equivalent to that estimated through normal market transactions.

As part of the documentation required for a permit, the applicant should provide cost estimates of the value of donated or discounted materials based on actual or estimated costs. This estimate should be verified by the local official based on professional judgment and knowledge of local or regional material costs. Some communities help non-profit organizations and applicants make these estimates.

4.4.5 Estimates of Owner and Volunteer Labor

The situations described in Section 4.4.4 that involve donated or discounted materials may also involve volunteer labor. Also, property owners may undertake fairly significant improvement and repair projects on their own. In both cases, the normal "market" value or "going rate" for labor must be included in the estimates of the cost of improvements and the costs to repair. After significant events, labor rates may change and should be taken into account.

Labor rates vary geographically and by the nature of the work and trade required. As part of the documentation required for a permit, the applicant should provide an estimate of the value of owner or volunteer labor. The value placed on labor should be estimated based on applicable minimum-hour wage scales for the skill and type of construction work that is done. This

estimate should be verified by the local official based on professional judgment and knowledge of the local or regional construction industry wage scales. Some communities help non-profit organizations and permit applicants make these estimates.

4.4.6 Demolition and Construction Debris Disposal

Demolition and construction debris disposal is not the same as clean-up and trash removal (Section 4.4.7). Virtually any type of work on a building requires some demolition. It may be as little as removing the flooring or an interior wall, or as much as complete removal of a portion of the building and its foundation. Demolition may be part of an improvement project and usually is a necessary part of repairing damage. The costs of demolition, including the costs of disposal of the resulting debris, must be included in the cost of work for the purpose of making the SI/SD determination.

4.4.7 Clean-up and Trash Removal

Clean-up and trash removal are distinguished from demolition and construction debris disposal (Section 4.4.6). Clean-up and trash removal costs are not included in the costs used in the SI/SD determination because they are not related to the actual cost of improving or repairing a building.

Clean-up costs include such work as draining a basement; removing dirt and mud; and cleaning, disinfecting, and drying out buildings. Trash removal includes disposing of trash piled in the interior of the building or accumulated on the lot and related costs (e.g., dumpster, hauling, and tipping fees), as well as removal of abandoned contents and debris related to general clean-up of the structure before the improvement or repairs can be performed.

If clean-up and trash removal are done at the same time as demolition and construction debris disposal, a cost estimate should clearly distinguish between costs that must be included and costs that may be excluded. Local officials can:

- Require property owners to submit itemized costs from all contractors, clearly identifying the costs related to trash disposal and clean-up from those related to demolition necessary to perform the work on the building, or
- Based on judgment and knowledge of local costs, estimate the amounts to be excluded. The permit record should contain documentation of the basis for making this estimate.

4.4.8 Costs to Correct Existing Health, Safety, and Sanitary Code Violations

The definition of substantial improvement provides an exclusion for "[a]ny project for improvement of a structure to correct existing violations 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" (emphasis added).

When deciding whether to exclude the costs to correct existing cited health, safety, and sanitary code violations, local officials must consider the following:

- **Correct existing cited violations.** The work must be:
  - Limited to that necessary to correct an existing violation. This means that only work that is directly required for correction can be excluded from the costs of the proposed improvement or repair. All other work must be counted in the estimation of costs.
  - Required to correct an existing violation. This means the condition considered in violation pre-dates the application for a permit (or the date of a damage event) and, importantly, an official who has the authority to enforce the community's health, safety, and sanitary codes must have prior knowledge of the condition and must have verified that it constitutes a violation.
  - Required to correct an existing violation. Violations of a community's health, safety, and sanitary represent threats to public health and safety. Such conditions are considered violations only if they have been identified as violations. The mere presence of a condition that does not conform to current codes does not qualify as a violation.
- **Identified by the local code enforcement official.** To exclude certain costs from the SI/SD determination, an official who has the authority to enforce the community's health and sanitary codes must have knowledge of and have identified the condition, and must have verified or determined that the condition constitutes a violation (normally, this involves issuing a citation or other official notice). Communities might not make a routine practice of inspecting structures in order to document and issue citations for violations. If likely violations of health and sanitary codes are identified by the property owner or contractor during the course of deciding what work to perform and before any improvements or repairs are made, the costs to address those code violations may be excluded, but only if the local official has made the determination that they can be excluded.
- **Minimum necessary to ensure safe living conditions.** To qualify as excludable, the cost of correcting existing violations must be only those costs for the work that is the minimum necessary to address and resolve the violation. Costs of work in excess of the minimum necessary must be included in the SI/SD determination.

For proper treatment of this substantial improvement exclusionary provision, a clear distinction must be made between violations and elements that simply do not meet the present-day design or building code standards. The following examples describe situations where the work performed to meet code requirements must be included in SI/SD determinations and some situations where costs may be excluded:

- Work on a building, or work associated with a change in use or occupancy, may trigger requirements for compliance with the current code. When this occurs, the costs associated with compliance do not qualify for exclusion because the work is not a code violation, but is necessary to meet current code. For example, consider an applicant who applies for a permit to perform work necessary for a change of occupancy from retail space to a restaurant. This will trigger certain code requirements and those costs must be included in the SI/SD determination. Costs that are related to compliance with current code requirements, but are not related to correcting existing violations must be included.

- The owner of a poorly insulated building proposes to rehabilitate it for a new occupant. Although the building does not conform to the current code for energy efficiency, the costs of adding insulation and other energy efficiency work must be included because the lack of adequate insulation is not a health and safety violation.
- An owner proposes to improve a building and has applied for a permit. The owner presents the building official with evidence of termite damage. Termite damage is discovered in the floor joints and the joists are unable to safely support loads required by current code. The building official verifies that it constitutes a violation and cites it as a safety code violation. The minimum cost to correct this violation may be excluded if the violation was cited. If other building components have sustained termite damage that is not a safety code violation, such as damage to non-bearing wall studs and wall trim, the cost to address the damage must be included.
- A restaurant's plumbing system is failing and bathroom fixtures are inoperable. The condition is cited as a violation of the sanitary code. The owner proposes not only to correct the violation but make other improvements, including adding a second bathroom. The costs to correct the failing plumbing system and replace its fixtures may be excluded. The costs of the other improvements, including the second bathroom, must be included.
- In the course of inspecting an abandoned building, the code official cites several conditions as violations that must be corrected before the building can be reoccupied. The building is subsequently purchased and the new owner applies for a permit to not only address the violations, but also to rehabilitate the building. Only the costs to correct the cited violations that are explicitly related to health, sanitary, and safety code requirements may be excluded. All other costs associated with the rehabilitation must be included in the cost of improvements.
- The owner of a home has been notified that the home is not safe to occupy because of violations of the electrical code provisions. Rather than perform only the required repairs, the owner decides to completely renovate the home and submits an application that shows all renovation costs, while excluding the costs associated with all of the electrical work (including replacing all wiring and fixtures, installing more outlets, upgrading the panel board, etc.). The plan reviewer should catch this discrepancy. The only costs that may be excluded are those that are necessary to correct the violation – which means the costs associated with the code violation must be determined before they can be excluded from the SI/SD determination. All other costs associated with the upgrade of the electrical work must be included.

4.5 Determining Market Value

For purposes of making SI/SD determinations, local officials need to determine the "market value" of structures in question. When work is an improvement, the market value is the building's market value "before the 'start of construction' of the improvement." When work is repair of substantial damage, the market value is the building's market value "before the damage occurred." If buildings have not been maintained and have deteriorated over time, then the market value is determined as of the date of the application for the permit to improve or repair the building.

The NFIP regulations do not define "market value." Generally, market value can be explained as the amount an owner would be willing but not obliged to accept, and that a buyer would be willing but not compelled to pay. The term may be defined by State statutes that pertain to zoning, property taxation, or real estate transactions.

Before reviewing options to determine the market value of a structure, it is important to note two basic NFIP requirements:

- Market value must always be based on the condition of the structure before the improvement is undertaken or before the damage occurred.
- Only the market value of the structure is pertinent. The value of the land and site improvements (landscaping, driveway, detached accessory structures, etc.) and the value of the use and occupancy (business income) are not included. Any value associated with the location of the property should be attributed to the land, not the building.

Many communities require the permit applicant to obtain an appraisal of market value from a qualified professional who is licensed to perform appraisals in the State or community where the property is located (Section 4.5.1). In addition, three other methods to estimate market value are covered in this section:

- Assessed value developed for property tax assessment purposes, adjusted to approximate market value (Section 4.5.2)
- Estimates of a structure's actual cash value, including depreciation (Section 4.5.3)
- "Qualified estimates" based on the professional judgment of a local official (Section 4.5.4)

Figure 4-3 illustrates the steps local officials need to take in order to determine market values. Additional guidance on estimating market value following disasters is provided in Chapter 7.

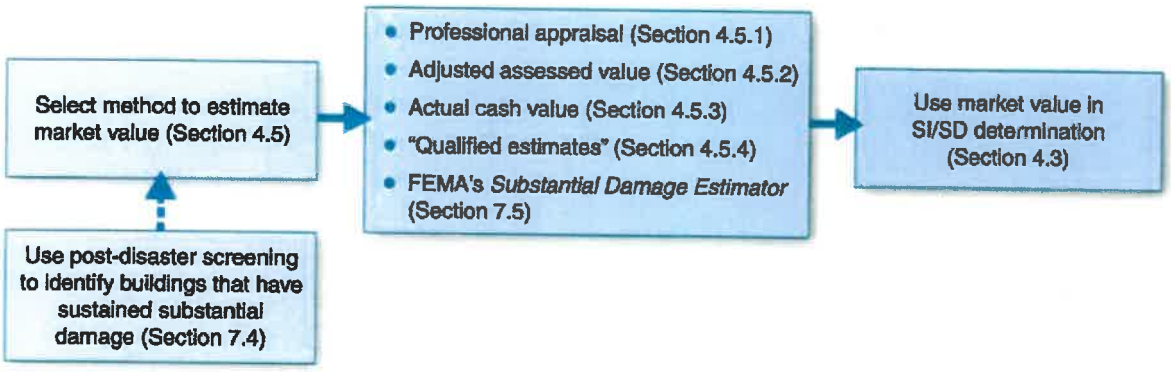

Figure 4-3. Determine the market value (overview)

4.5.1 Professional Property Appraisals

Property appraisals that are prepared by a professional appraiser according to standard practices of the profession are the most accurate and reliable method for determining market value. Professional appraisers should be qualified to appraise the type of property (e.g., residential, commercial, industrial) and should be licensed in the State or community in which the property is located. Most States require professional property appraisers to be licensed and to perform valuation work in accordance with the quality control standards found in the *Uniform Standards of Professional Appraisal Practice*, which are maintained and administered by The Appraisal Foundation (http://www.appraisalfoundation.org). In those States that require use of the standards, local officials should check that market value appraisals prepared to support SI/SD determinations have a statement regarding conformance with this standard.

Appraisal reports should identify intended users, including the property owner, who can then submit it as part of a permit application. In addition, the appraisal should be recent enough to reasonably reflect current market value as of the date of the permit application. When used to determine market value for damaged buildings, the appraisal must reflect the pre-damage condition. The "market approach" for determining market value works best if there are adequate market data and recent sales of comparable properties in the vicinity. Note that using the "income capitalization approach" is not acceptable because it is based on how the property is used, and not the value of structure alone. To separate the market value of a structure from the value of the land on which it is located, appraisers may need to do more research than is normally undertaken in order to reasonably allocate the total value between the structure and the land.

The following are situations where the local official may require the applicant to provide a professional appraisal to determine the market value of a structure:

- When it is written explicitly into the community's floodplain management regulations or required by other local or State codes that independent appraisals shall be used for decisions related to non-conforming use permits.
- When the estimating methods that are used post-disaster (Section 7.4) yield a market value that indicates that the cost of proposed work closely approaches 50 percent of the structure's estimated market value.
- When an applicant disagrees with the community's SI/SD determination.

When a professional appraisal of market value is submitted, the local official is responsible for examining it to determine that it is reasonable for the specific characteristics of the building and to check that it does not include the value of land, land improvements (e.g., landscaping, paving), and accessory buildings. The market value of a non-residential building does not include the value of the use or occupancy. If there is cause to question the appraisal (for example, if it appears to overvalue the structure), the local official may request that another appraisal be provided.

4.5.2 Adjusted Assessed Value

Generally, assessed values or property assessments are determined by the State or local taxing or assessment authority. The assessor's job is to independently estimate the market value of real property. Assessments usually provide both land value and value of improvements, and are used as the basis for determining property taxes. Assessments are revised or adjusted periodically to account for changes in property values. The use of assessed value has some limitations that, if not considered and accounted for, can produce erroneous estimates of market value. These limitations are:

- **Appraisal cycle.** How often are the appraisals done and when was the date of the last appraisal? Market value estimates can be grossly outdated if the cycle is long and the property happens to be in the latter stage of its cycle and has not been appraised for many years.
- **Land values.** In most cases, land values and the value of improvements (structures) thereon will be assessed separately and listed as such in the tax records. In cases where they are not distinguished, a determination of the value of the land will have to be made and subtracted from the total assessed value.
- **Assessment level.** States and local taxing authorities vary in assessment levels (an established statutory ratio between the assessor's estimate of value and the true fair market value). For example, many States use an assessment level of 90 percent. In this case, the assessed values will underestimate market values by 10 percent. In cases where the assessment level is unacceptably low or where the projected ratio of cost of repair to market value is close to 50 percent, adjustments for assessment level must be made.

Local officials who elect to use assessed values for making SI/SD determinations should consult the authority that prepares the assessment values to understand the limitations on use of the data. Usually an adjustment factor is necessary because the assessed values cannot be used as a direct equivalent for current market value. The assessor's office should provide the adjustment factor that, when applied to assessed value, yields the "adjusted assessed value" that can then be used as an estimate of market value. A copy of the adjustment factor justification should be retained with the community's permanent records.

Adjusted assessed value may be used as a screening technique to separate out structures for which the ratio of repair or improvement costs to market value (adjusted assessed value) are obviously less than or greater than 50 percent. In post-disaster situations where no other market value estimates are available or where the number of permit applications is overwhelming, unadjusted assessed values may have to suffice as the definitive estimate of market value.

"Unadjusted assessed values" can be used to help local officials focus their efforts when large numbers of SD determinations must be made, such as after a disaster (Section 7.3.2).

An owner may appeal the use of assessed value, but the burden of proof can be placed on the applicant who can be required to submit an independent professional property appraisal that is prepared by a qualified appraiser.

4.5.3 Actual Cash Value

Actual cash value (ACV) is the cost to replace a building on the same parcel with a new building of like-kind and quality, minus depreciation due to age, use, and neglect. ACV does not consider loss in value simply due to outmoded design or location factors. The concept of ACV is used in both the insurance industry and the construction industry. In most situations, ACV is a reasonable approximation of market value.

A number of commercial sources of construction cost information are available to support estimating the replacement cost of a building, including industry-accepted guides available from companies such as RSMeans (http://www.rsmeans.com) and the Craftsman Book Company (http://www.craftsman-book.com), among others. These sources allow computation of construction costs based on occupancy, square footage, quality, and regional cost variations.

Depreciation accounts for the physical condition of a structure. Depreciation does not take into account functional obsolescence (e.g., outmoded design or construction that pre-dates current codes) or factors that are external to the structure (e.g., reputation of schools or distance to shopping and parks). Commercially available references provide tables and formulas to calculate physical depreciation. These tables and formulas are objective and are used by most professionals in the fields of property appraisal and building inspection. Local officials may consult with a qualified appraiser regarding depreciation, or additional guidance for applying depreciation rates over time is found in FEMA P-784 CD, *Substantial Damage Estimator* (Section 7.5).

4.5.4 Qualified Estimates

A "qualified estimate" of a structure's market value is an estimate developed by a qualified local official who has sufficient experience and professional judgment on which to base such estimates. The local official may be in the building department or in the tax assessor's office. The estimates should be made using the best available information, which may include recent permit records, recent home sales, regional cost data, estimates of depreciation based on knowledge of the pre-damage condition of buildings, and adjustments for unique or distinctive features of individual buildings. Another way that a local official may develop qualified estimates is if professional appraisals have been prepared for a few buildings; in that case, those results may be used to approximate the market values of similar buildings. This approach should be used only if the approaches described above cannot be used. Qualified estimates are most likely to be used in the post-disaster situation after large numbers of buildings have been damaged.

5 Administering Substantial Improvement and Substantial Damage Requirements

5.1 Overview

This chapter covers administrative topics, including community responsibilities and the responsibilities of property owners and permit applicants. It highlights options for informing the public about the SI/SD requirements and the need to get permits. Several matters that arise when reviewing permits are addressed in detail.

Chapter 4 focused on making SI/SD determinations and the data that are necessary to make those determinations, including the cost of improvements, the cost of repairs, and the market value of buildings. Chapter 6 includes illustrations of SI/SD, and explains certain NFIP flood insurance implications related to SI/SD. Chapter 7 recommends ways to handle substantial damage in the post-disaster period, especially when many buildings are damaged. Chapter 8 provides brief descriptions of common types of flood mitigation projects that may be eligible for funding by FEMA's five Hazard Mitigation Assistance grant programs.

5.2 Community Responsibilities

When a community decides to participate in the NFIP, it accepts the responsibility to adopt, administer, and enforce floodplain management provisions that either meet or exceed the minimum NFIP requirements. The following describes the responsibilities that specifically apply to administering the SI/SD requirements:

- Review permit applications to determine whether improvements or repairs of buildings in SFHAs constitute substantial improvement or repair of substantial damage.
- Review descriptions of proposed work submitted by applicants to ensure that all requirements are addressed.
- Review cost estimates of the proposed work submitted by applicants and determine if the costs are reasonable for the proposed work, or use other acceptable methods to estimate the costs.
- Decide the method to determine market value (including which method to use after an event that damages many buildings) and identify the buildings most likely to have sustained substantial damage.

> Even if work on a building is determined to not constitute SI/SD, owners can do a lot to reduce future flood damage. Some recommendations that local officials may wish to encourage are listed in Section 5.8.

- Review market value appraisals, if submitted by applicants, to determine if the appraisals reasonably represent the characteristics of the building and the market value of the structures (excluding land value).
- Determine if proposed improvements are substantial improvements based on the costs of the proposed work compared to the market value of the building.
- Determine if damaged buildings are substantially damaged based on cost estimates for repairs compared to the market value of the building before the damage occurred.
- Issue a letter to the property owner to convey the SI/SD determination. If NFIP-insured buildings are substantially damaged by flooding, this letter is necessary for owners to file an Increased Cost of Compliance (ICC) claim to help pay to bring buildings into compliance (Section 7.6).

Local building officials have the authority to condemn buildings that are judged to be unfit for occupancy. Judging whether to condemn a building and making a determination of substantial damage are separate decisions. A condemned building might not be substantially damaged and a substantially damaged building might not have conditions that warrant condemnation.

- Retain all versions of the Flood Insurance Rate Maps (FIRMs) and allow citizens to access the maps. The most recent map, called the "effective" map, is to be used to regulate development, including substantial improvements. Earlier versions of the maps are necessary to verify BFE data for post-FIRM buildings that pre-date the current effective maps.
- Maintain in the permit file specific information on all development that occurs within the SFHA and make this information available for public inspection. The documentation should include the lowest floor elevations, other pertinent elevations such as for machinery and equipment, and flood protection designs.
- Conduct periodic field inspections during construction to ensure that development complies with issued permits, work with builders and property owners to correct deficiencies and violations, and check for unpermitted development.
- Perform assessments after events that cause damage, inform property owners of the requirement to obtain permits for repairs, and determine whether the damage qualifies as substantial damage.
- Coordinate with property owners and insurance adjusters regarding NFIP flood insurance claims and ICC coverage.

5.3 Property Owner/Applicant Responsibilities

Property owners and applicants for permits have certain responsibilities that are implicit when a community adopts regulations and building codes that apply to their properties. First and foremost, they have a responsibility to comply with the requirements that are enforced by communities, including floodplain management requirements. The following is a summary of those responsibilities pertinent to the SI/SD requirements:

- Find out if a permit is required. Most property owners – and all contractors – understand that permits are required for some types of work. It is common for owners to specify

that contractors obtain permits. However, sometimes owners assume that contractors automatically do so and, as a result, the work may be undertaken without permits. Legally, the responsibility lies with the owner.

- Submit complete information about all proposed improvements and all repairs to be undertaken, including the costs of all work (and valuations of work that the owner or volunteers will perform, including estimated costs of donated materials).
- Share information from insurance claims adjusters, if requested by the local official.
- Provide a professional appraisal of the market value of the building if requested by the local official (or accept the market value estimation made by the local official).
- Comply with the approved plans and limitations specified in the issued permit and the approved construction documents.
- Inform the local official if new work is to be added to the work already authorized by an issued permit. New work must be reviewed to determine whether the community's floodplain management regulations apply.
- Contact the community to schedule inspections at the appropriate times and submit surveyed elevation data when required by the local official.
- Provide "as-built" surveyed elevation data (e.g., FEMA's *Elevation Certificate*) to the local official to determine compliance (the *Elevation Certificate* also is necessary for insurance agents to determine the appropriate rate for NFIP flood insurance policies).
- Maintain enclosed areas below elevated buildings as compliant enclosures by not altering any aspect required by the permit, including limitations on use for parking of vehicles, building access, and storage.

5.4 Important Community Actions

Communities routinely process permit applications for work on existing buildings. For buildings located in SFHAs, work that constitutes substantial improvement triggers the requirement to bring buildings into compliance. Some property owners may view this as an undue burden that may cost them considerably more than the work originally proposed. Therefore, it is important that communities have a well-established process that treats all owners in a consistent manner. This is especially important in communities that have large numbers of buildings in their floodplains that could be damaged by a single event.

The remaining sections of this chapter will describe the following important community actions with respect to SI/SD:

- Informing the public (application forms, websites, handouts)
- Administering the SI/SD requirements
- Exceeding the NFIP minimum floodplain management requirements
- Recommendations to improve flood resistance

5.5 Informing the Public

Most property owners understand that building permits are required when they want to have work done on their buildings. However, they are rarely aware of the requirements that apply when buildings are located in SFHAs. Informing the public about the requirements may alleviate some of the difficulties that can occur when uninformed owners apply for permits. Successful outreach methods employed by communities include:

- Permit counter staff and inspectors are trained and familiar with the SI/SD requirements and other requirements for development in SFHAs and they all convey the same message when talking with property owners and contractors.
- Permit application forms or supplements to applications are designed specifically to capture information about work proposed for buildings in SFHAs.
- Handouts at the permit counter explain floodplain requirements, including the SI/SD requirements.
- Information is posted online about permit requirements, including SI/SD requirements in the SFHA.
- Newsletters and brochures are used for periodic mailings, such as those described in guidance materials developed for the NFIP's Community Rating System (Section 5.7.1).

5.5.1 Permit Application Forms

A permit is required for almost every type of development that is proposed in the mapped SFHA. Local permit application forms should be designed to collect the information needed to make SI/SD determinations. Permit forms should require applicants (or their contractors) to provide detailed descriptions of the proposed work and detailed breakdowns of the costs of work, as this information is essential for making SI/SD determinations. Some communities that have many buildings in their SFHAs have developed detailed permit application forms to help them review proposals for work in SFHAs, including work on existing buildings.

Forms and checklists help ensure that all applicants are treated consistently. They also make it easy for the local official to document SI/SD determinations and to retain that documentation in permanent records.

Appendix D includes a sample notice called "Sample Notice for Property Owners, Contractors, and Design Professionals" that includes a summary of the "50% rule," information about property valuation, a list of items to be included and excluded in the cost of work, and a cost-breakdown sheet. The sample notice includes two affidavits to be signed by the owner and the contractor. The affidavits are used to confirm that the work described in an application is all of the work that will be done.

5.5.2 Websites and Handouts

Most communities have websites designed to provide information for their citizens. Websites often include sections to explain requirements for various permits and approvals. Some even

have online permit application capabilities. Increasingly, citizens, designers, and contractors are turning to websites to learn about regulations and requirements. Posting information online about development requirements in SFHAs is helpful for communities and their citizens.

Despite the increased use of the Internet, most communities still provide printed materials. Many communities distribute newsletters and brochures to their citizens, including materials related to flood hazards, flood insurance, and SFHA construction requirements.

5.6 Administering the SI/SD Requirements

The NFIP requires communities to review all applications for development in SFHAs and to apply their floodplain management regulations and building codes to work that is proposed on existing buildings. Chapter 4 described making SI/SD determinations, estimating costs, and estimating market values. This section addresses several topics that local officials encounter when administering floodplain management regulations and building codes pertaining to SI/SD:

- Combinations of types of work
- Phased improvements
- Incremental repair of damaged buildings
- Damaged buildings
- Special circumstances (involving damaged buildings)
- Appeals of decisions
- Variances to the requirements
- Floodways
- V zones
- Coastal Barrier Resource Areas
- Revisions of the FIRM
- Inspections
- Enforcement and violations
- Recordkeeping
- Issuing SI/SD determination letters
- Rescinding SI/SD determinations

5.6.1 Combinations of Types of Work

It is common for local officials to see applications for combinations of improvements and repairs. In these cases, the combined cost of all work must be used to make the SI/SD determination. For example, it is common for property owners who are making necessary repairs to damaged buildings to also include elective improvements. Communities must require applicants to

provide the estimated costs of all proposed improvements and repairs. The total cost is then used to make the SI/SD determination, comparing it to the pre-damage or pre-improvement market value of the building. Section 6.4 illustrates examples of types of work that local officials may see combined in permit applications.

5.6.2 Phased Improvements

The term "phased improvement" refers to a single improvement that is broken into parts. For a number of reasons, owners may wish to schedule anticipated improvements over a period of time, and they may request separate permits for each phase. Local officials should take care to ensure that phased improvements do not circumvent the substantial improvement requirements.

> Concern about phased improvements is one reason why some communities adopt requirements that accumulate the value of improvements over time (Section 5.7.3).

Experienced plan reviewers can usually tell if the work described in a permit application adequately identifies all of the work needed to complete the improvement. One approach is to remind the applicant that the application is a legal document and that it is the applicant's responsibility (or the responsibility of the applicant's design professional or contractor) to accurately complete the application. It is also reasonable for the local official to request that the applicant state, in writing, that the work proposed is all of the anticipated work and that the work can be done for the stated cost estimate.

Some communities address deliberate phasing of improvements in the permit application or other document. Appendix D includes sample affidavits that the community may require be signed by owners and contractors to confirm that the work described in an application is all of the work that will be done.

Other scenarios of phased improvements include:

- **Incomplete work.** Permits should not be issued for work that clearly will not result in a building that can be occupied without additional work. For example, while a community may decide to issue one permit for the foundation, framing, and roof of an addition, and a second permit at a later time to complete the remaining work necessary for occupancy (electrical, plumbing, flooring, etc.), the SI/SD determination must be made prior to issuance of the first permit, and must consider the cost of all work regardless of the number of permits issued.
- **Multiple permits.** Some jurisdictions, especially larger cities and counties, issue separate mechanical, electrical, plumbing, and building permits. If handled by different offices, coordination is especially important so that the value of all work is combined for the SI/SD determination, regardless of the number of permits issued.
- **Consecutive permits.** If an application for a second permit is submitted within a short period of time after the first permit is issued, the local official should examine whether the work covered by the second request is related to improvements to the building. If so, then the work must be evaluated in conjunction with the first permit to determine whether the combination constitutes substantial improvement. The substantial improvement regulations

apply to all of the work that is proposed as the improvement, even if multiple permits are issued. Therefore, the determination of the cost of the improvement should consider all costs of all phases of the work before issuance of the first permit.

- **Modification of issued permits.** A request to modify an existing permit to add work could retroactively trigger substantial improvement. It is common that a permit is issued to repair a damaged structure, and the owner subsequently decides to have some additional improvements done. Whether the community handles this as a modification of the initial permit or issuance of a second permit, care must be taken to reevaluate the SI/SD determination. Local officials must verify that the proposed repair work includes all of the anticipated work, including improvements to the building.
- **Unauthorized work.** If unauthorized work on a building in the SFHA is discovered, the enforcement action taken by the community must include making an SI/SD determination. The costs must include all of the work that has been performed, plus all of the remaining work necessary to complete the project.

5.6.3 Incremental Repair of Damaged Buildings

"Incremental repairs" are similar to phased improvements and refer to a single repair project that is broken into parts. When buildings have sustained damage, regardless of the cause, it is fairly common for some owners to undertake restoration and repairs over a period of time. Sometimes the initial work is only the minimum necessary to make the building safe enough to reoccupy (provided reoccupancy is allowed by the community). Sometimes the owner's financial situation does not allow all of the repairs to be done at the same time.

The definition of "substantial damage" makes it very clear that the substantial damage determination must consider all costs necessary to restore damaged structures to their before-damage condition. Even if an owner elects to perform less work or make repairs over time, the community must require the applicant to provide an estimate of the costs to fully restore the structure. Section 4.4 includes guidance on estimating the costs of work performed by the owner or volunteers and the costs of donated or discounted materials.

5.6.4 Damaged Buildings

Most damage occurs during a single and sudden event, such as a fire, high wind, lightning strike, falling tree, tornado, earthquake, flood, natural gas explosion, etc. However, buildings also may be damaged by causes that are not related to a specific event. These causes include soil settlement, exposure to the elements, termite infestation, vandalism, deterioration over time, and other causes. Regardless of the cause of damage, when owners apply for permits to repair, communities must determine whether the building is substantially damaged.

> Property owners should check their insurance policies. Policies that include "law and regulations" coverage may cover costs associated with complying with requirements to bring buildings into compliance with flood provisions in local floodplain ordinances or building codes.

With respect to making substantial damage determinations, costs to repair must include all costs that are necessary to repair a building to its pre-damage condition, even if the owners elect to perform only some repairs or incremental repairs (Section 5.6.3).

If a community suffers damage to only a few buildings, then the permits for repairs generally can be handled under a community's standard permit processing procedures. Communities that have a large number of buildings in their floodplains should decide in advance how best to handle inspecting damaged buildings and making substantial damage determinations (Chapter 7). In those circumstances, FEMA's *Substantial Damage Estimator* (SDE) software provides an effective and efficient approach for developing reasonable estimates of the values of buildings and costs to repair or reconstruct buildings (Section 7.5).

Issuance of an SD determination does not necessarily indicate that a building is unsafe, unfit for occupancy, or condemned.

Local officials should become familiar with the ICC coverage that is part of NFIP flood insurance policies. ICC claims are only paid on buildings in the SFHA that the local official determines to be substantially damaged or that have sustained repetitive flood damage that qualifies under the policy. ICC can provide policyholders with up to $30,000 towards costs necessary to bring a building into compliance with the community's floodplain management requirements. ICC is described in Section 7.6.

5.6.5 Special Circumstances (Damaged Buildings)

Communities should be aware of a number of special circumstances that may arise when dealing with damaged buildings:

- **Change of ownership.** Sometimes owners sell damaged buildings in SFHAs before repairs are undertaken. Change of ownership does not have any bearing on the substantial damage determination. Regardless of whether the determination is made before or after the sale, it is to be based on the value prior to the date of damage.
- **Multiple flood events.** Communities may have to address damage resulting from multiple flood events. All affected structures should be handled consistently:
  - If no repairs are made to a structure after a flood, and a second flood causes additional damage, local officials must include all costs to repair damage from both events. The market value of the building used in making an SI/SD determination is the value prior to the first flood. If that value cannot be determined, the market value prior to the second flood should be used.
  - If some or all repairs are made after a flood (and the cost to repair to the structure was determined to not be substantial damage), and a second flood causes damage that must be evaluated to determine whether the building was substantially damaged, then the market value is the value prior to the second flood.
- **Conditions discovered in the course of doing work.** Occasionally, additional damage is discovered during the course of work that has been authorized by a permit. For example, termite damage or other conditions may not have been identified before the permitted work is started, but it is discovered once work is underway. Such conditions may reduce the

capacity of the load-bearing members or otherwise result in damage to the building. After the condition is revealed, if the work that is required to address the discovered condition triggers a change in the permit, the community must reevaluate the SI/SD determination. The costs of the new work must be added to the cost of the improvement. The market value of the building that was used in the original determination is used in the revised determination.

5.6.6 Appeals of Decisions

An applicant for a permit may appeal a decision, order, or determination that was made by the local official. This occurs most often if there is ambiguous language in a code or regulations that leads to differing interpretations. Typically, appeals are heard by a board designated to hear such cases, which may go by a variety of names (board of appeals, board of adjustments, etc.). In some small communities, the function may be handled by the jurisdiction's governing body (town council, board of selectmen, etc.).

An owner may appeal the local official's finding or determination that the proposed work constitutes SI/SD. The owner may appeal an SI/SD determination on the basis of insufficient information, errors, repair/improvement costs that should be included/excluded, inappropriate valuations of costs for the proposed work, or an inappropriate method to determine the market value of the building.

It is not appropriate for an owner who wishes to build in a manner that is contrary to the regulations and codes to seek an appeal. In those cases, the owner would seek a variance.

5.6.7 Variances to the Requirements

A variance is a grant of relief from the terms of a land use, zoning, or building code regulation. If granted, it allows construction in a manner that is otherwise prohibited. The burden of determining whether to grant a variance rests on the community.

The primary goals of the NFIP and local floodplain management regulations and codes are the reduction of damage and protection of public health and safety. Because a variance from the requirements for construction in SFHAs can create an increased risk to life and property, local officials should carefully consider requests for variances from flood elevation or other floodplain management requirements.

NFIP flood insurance policies on post-FIRM buildings and substantially improved buildings that do not comply with the NFIP requirements, even if authorized by a properly issued variance, are rated according to risk. The cost will be high if a variance allows the lowest floor to be below the BFE (see Figure 6-14 in Section 6.6).

The NFIP regulations do not set forth absolute criteria for granting variances [44 CFR § 60.6]. The regulations outline procedures that communities must follow (see FEMA 480, *Floodplain Management Requirements: A Study Guide and Desk Reference for Local Officials* for additional guidance on handling variances). Variances shall only be issued based on the following:

- A showing of good and sufficient cause;

- A determination that failure to grant the variance would result in exceptional hardship (consistent with usage related to land use and zoning, in this context a "hardship" must be related to the land, not a financial or personal circumstance of the owner);
- A determination that granting the 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, or conflict with existing local laws or regulations; and
- Evidence that the variance is the minimum necessary to afford relief, considering the flood hazard.

As a guiding principle, a variance should pertain to the unique characteristics of the land itself. A properly issued variance may be granted for a parcel of land with physical characteristics so unusual that complying with the regulation or code would create an exceptional hardship for the applicant. However, a variance should not be granted based on the personal circumstances of an individual.

Insufficient justifications for variances to the SI/SD requirements include:

- Inconvenient access to an addition
- Difficult access for those with physical limitations
- Too costly to comply
- The owner does not plan to get flood insurance
- Building will look different
- Building will need a waiver of height limitations

Sometimes variances are sought because the owner or the designer believes they will not be able to meet the community's floodplain management regulations. Usually there are alternative ways to comply that would negate any purported justification for a variance, and local officials should require consideration of those alternatives before acting on variance requests. Typical characteristics of a parcel of land that might justify a variance include an irregularly shaped lot, a parcel with unsuitable soils, or a parcel with an unusual geologic condition below ground level. However, it is unusual that any physical characteristic would give rise to a hardship that would be sufficient to justify issuing a variance to the elevation requirement.

A community that grants a variance based on the above evidence and according to FEMA guidance does not jeopardize its standing in the NFIP. However, FEMA and the States periodically evaluate how effectively communities administer their floodplain management requirements. FEMA becomes concerned when there is a pattern of variances that suggest the practice is used to circumvent requirements.

Communities that administer the I-Codes may handle variances to the flood provisions through their boards of appeals. Unless the State or community has modified or replaced the administrative provisions, the IRC specifies that the building official will review information provided with permit applications for work on buildings in SFHAs. The official will make a finding based on the cost of the proposed work and the market value of the building and, if the results indicate the work is a substantial improvement, the finding is forwarded to the board of appeals for a final determination. Communities have a board of appeals (which might go by another name) to hear and decide appeals of orders, decisions, or determinations made by the building official. The IRC outlines specific responsibilities of the board when hearing matters related to

structures in SFHAs, including:

- **Determination of substantial improvement in areas prone to flooding.** Requires the board of appeals to evaluate the building official's finding regarding the value of proposed improvements to determine if the work constitutes SI/SD.
- **Criteria for issuance of a variance for areas prone to flooding.** Sets forth specific criteria, consistent with the minimum NFIP requirements, to be applied in the review and consideration of variances to the minimum flood hazard area requirements.

5.6.8 Floodways

Local officials must examine proposals for work on buildings that are located in floodways to determine whether the work constitutes SI/SD. If a building is located in a floodway, bringing it into compliance may involve a floodway encroachment analysis. The NFIP regulations require that this analysis be performed for any work that encroaches into a floodway [44 CFR § 60.3(d)(3)]. If the analysis indicates any increase in the BFE, the local official must not allow the proposed work.

> The NFIP defines the floodway as the channel or other watercourse 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 a designated height. Floodways are delineated along most waterways that are studied using detailed methods.

The analysis that is performed to delineate floodways takes into consideration existing encroachments and obstructions (including buildings) that were present at the time the data were collected for the analysis. This means that proposals for work on existing buildings that are located in a floodway are evaluated based on whether the exterior dimensions (footprint) of the original buildings will be increased, as follows:

- **No change to footprint.** Substantial improvement that does not expand the footprint might be an interior-only renovation or an added story. If the actions necessary to bring the building into compliance do not increase the exterior dimensions, a floodway encroachment analysis is not required. Note that enclosing a deck that is below the BFE to change it to livable space should be treated as an addition even though the work does not increase the footprint; the addition becomes an encroachment in the floodway and an analysis must be prepared.
- **Increase in footprint, substantial improvement.** If work that increases the footprint (including an increase in fill, if used for elevation) involves an addition (or a combination of interior work and an addition) is determined to be a substantial improvement, the building must be brought into compliance. In this case, a floodway encroachment analysis is required because the exterior dimensions will be increased. A permit for the increase in footprint cannot be issued if the analysis indicates any increase in the BFE. An option that may decrease the effects of encroachment is to elevate additions on open foundations (piers or columns).
- **Increase in footprint, non-substantial improvement.** Local officials must review all proposed development in SFHAs and authorize the development by issuing permits. Development includes additions that do not constitute substantial improvements. If located in a floodway, a proposal to expand the exterior dimensions of a building with an addition that is not

a substantial improvement must be supported with a floodway encroachment analysis. Although the NFIP regulations do not require that the addition be elevated and meet all other requirements of the NFIP, the addition may be a potential encroachment into the floodway that must be evaluated. If the floodway analysis indicates any increase in the BFE, a permit cannot be issued for the addition.

5.6.9 V Zones

Local officials must review proposals to improve structures that are located in V zones to determine compliance with the NFIP's V zone provisions, as well as the requirements for substantial improvements found in 44 CFR § 60.3(e). In V zones, new and substantially improved buildings must:

In V zones, a registered professional engineer or architect shall develop or review the structural design, specifications, and plans and shall certify that the design and methods of construction are in accordance with accepted standards of practice to meet the V-zone requirements.

- Be elevated on open foundations (pilings or columns) that allow floodwaters and waves to pass beneath the elevated buildings
- Be elevated so that the bottom of the lowest horizontal structural member of the lowest floor is at or above the BFE
- Have the foundation anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components
- Have the area beneath the elevated building free of obstructions that would prevent the free flow of floodwaters and waves during a base flood event
- Have utilities and building service equipment elevated above the BFE
- Have the walls of enclosures below the elevated building designed to break away under base flood conditions without transferring loads to the foundation

Section 6.4 describes some of the more common examples of improvements and repairs and descriptions of how property owners and contractors can meet NFIP requirements (also see Tables 6-1a and 6-1b). It is important to note again that work on a post-FIRM building cannot be allowed if it would make the building non-compliant with the floodplain management requirements that had to be met when the building was constructed.

All substantially improved buildings in V zones must be elevated. Floodproofing is not allowed in V zones, even for non-residential buildings.

5.6.10 Coastal Barrier Resource Areas

The Coastal Barrier Resources Act of 1982, and later amendments, prohibits the NFIP from providing flood insurance for structures built or substantially improved after October 1, 1983, in any areas designated as undeveloped coastal barriers. These areas are mapped and designated by Congress as units of the Coastal Barrier Resource System (CBRS) and are shown

on FIRMs. The FIRMs also show areas designated as Otherwise Protected Areas (OPAs), which include portions of coastal barriers that are used primarily for natural resources protection and are owned by Federal, State, and local governments or by certain non-profit organizations.

Permits are required for new construction and for improvements of existing buildings in CBRSs and OPAs. Communities are required to administer their floodplain management regulations even if Federal flood insurance is not available for new buildings and substantially improved buildings in these areas.

Local officials must process permit applications for repairs and improvements to buildings in CBRSs and OPAs. If the work is SI/SD, then it must comply with the minimum requirements of the NFIP. It is important to realize that pre-FIRM buildings in CBRSs and OPAs that qualified for NFIP flood insurance may lose that eligibility if they are substantially improved or sustain substantial damage. Federal flood insurance may be obtained for a structure in the OPA if written documentation certifies that the structure is used in a manner consistent with the purpose for which the area is protected.

5.6.11 Revisions of the FIRM

The NFIP expects communities to maintain copies of all flood hazard maps, even those that have been replaced with revised maps. This is especially important when work is proposed on post-FIRM buildings.

In many communities, flood hazard maps have been revised to reflect new floodplain studies, better flood data, improved topographic data, new encroachments and bridges, and for other reasons. When flood hazard maps are revised, either the SFHAs expand in area and the BFEs increase, or the SFHAs reduce in area and the BFEs decrease. Map revisions may reflect changes in community boundaries, zone designation, new floodway delineations, or changes in floodway boundaries. Also, A zones without BFEs may be studied and shown with BFEs, or waterways that were previously unmapped may be shown with SFHAs.

Communities must maintain all versions of their Flood Insurance Studies (FISs) and flood hazard maps. This is an important responsibility because it affects consideration of work on buildings constructed in compliance with a map that pre-dates a current effective map. Section 6.4.8 describes repairs and improvements on post-FIRM buildings where there have been revisions to the FIRM.

5.6.12 Inspections

Even when building permits and construction plans are complete, proper inspections during construction are important to determine whether any work has deviated from the approved permits and plans. Building inspectors need to understand the flood damage-resistant design and construction requirements that they are to check during inspections. If deviations from the conditions of a permit or plans are discovered early during construction, it will be easier to work with the owner and builder to achieve compliance through corrective actions.

Using a plan review and inspection checklist can make inspections easier because the inspector has a standardized summary of floodplain management requirements. A checklist also

documents the inspection, which can be important if questions arise regarding compliance.

The following inspections are recommended for buildings that are required to be brought into compliance with the floodplain management requirements for new construction and substantial improvements:

- **Footing or Foundation Inspection.** Buildings and additions that are elevated on solid perimeter foundation walls create enclosures below the elevated buildings (e.g., crawlspace or underfloor space). Inspectors should check for the specified number, size, and location of flood openings. The bottom of each flood opening must be no higher than 1 foot above finished exterior grade or interior floor; flood openings should not be confused with underfloor air ventilation openings, which are located just under the floor level. For slab-on-grade (and stemwall) foundations, the lowest floor inspection is also conducted at this time.
- **Lowest Floor Inspection.** The best time to verify compliance with the elevation requirement is after the lowest floor elevation is set, but before further vertical construction takes place. An error in elevation of a foot or two may seem minor, but corrective action can be expensive and complicated if that error is discovered after the walls and roof are in place.
- **HVAC Inspection.** Verify that utilities and mechanical equipment are elevated or designed to prevent water from entering or accumulating within the components during conditions of flooding [44 CFR § 60.3(a)(3)]. Frequently overlooked items include heating, ventilation, and cooling equipment; electrical outlets; plumbing fixtures; and ductwork that is installed under the floor, usually in a crawlspace.
- **Enclosure Inspection.** Inspect enclosures below elevated buildings to ensure that they comply with the limitations on use (parking, building access, or storage), protection of HVAC described above, the use of flood damage-resistant materials, and the specific requirements based on the flood zone (openings in A zones or breakaway walls in V zones).
- **Final Inspection.** A final inspection to document compliance can be performed at the same time as the final inspection to issue the occupancy certificate. During final inspections:
  - Collect the "as-built" documentation of elevations prior to the final sign-off and issuance of occupancy certificates.
  - If used, complete and sign the plan review and inspection checklist and place all inspection reports in the permit file.

The NFIP requires communities to obtain and retain documentation of the lowest floor elevations of new buildings and substantially improved buildings. FEMA's *Elevation Certificate* is designed specifically for this purpose.

FEMA's *Floodproofing Certificate* is designed to satisfy the documentation requirements when non-residential buildings are proposed to be dry floodproofed.

5.6.13 Enforcement and Violations

Proper enforcement of the floodplain management provisions is a critical part of fulfilling a community's responsibility under the NFIP. During construction, violations of the provisions must be resolved as soon as they are discovered and before further construction takes place. What may first appear to be a minor violation could turn out to be a significant issue that not

only exposes property owners and occupants to future flood damage, but results in higher NFIP flood insurance policies.

> The NFIP expects communities to attempt all reasonable actions to bring violations into compliance. When such attempts are unsuccessful, the community should contact the NFIP State Coordinator or the FEMA Regional Office for advice.

If the community has exhausted legal means to remedy a violation and the owner refuses to resolve the matter and bring the building into compliance, the community may cite the structure as a violation in accordance with Sec. 1316 of the National Flood Insurance Act of 1968. This provision allows the NFIP to deny flood insurance on the building that remains in violation, and on all other insurable buildings on the property. Owners who refuse to resolve violations should be informed that denial of flood insurance can have significant consequences: the property may be difficult to sell; the owner may have problems with the mortgage lenders if flood insurance cannot be maintained; and future Federal disaster assistance may be denied.

A community's standing in the NFIP depends on making a good faith effort to successfully resolve violations. By allowing a violation to go unresolved, the community may set a precedent, making it more difficult to take future enforcement actions and potentially jeopardize participation in the NFIP.

5.6.14 Recordkeeping

Obtaining certain documentation and maintaining complete permit records are key responsibilities for communities that participate in the NFIP. Certifications or documentation of the following must be maintained for all new buildings constructed in SFHAs and, if applicable, for buildings that are substantially improved:

- The permit application form and all attachments, including the site plan
- Documentation of the SI/SD determination
- Community letter documenting the SI/SD determination (Section 5.6.15)
- Floodway encroachment analyses (Section 5.6.8)
- Records of inspections of the project while under construction such as obtaining the lowest floor elevations, which is initially obtained after the foundation is in place but prior to further vertical construction, and other pertinent elevations
- Design of engineered openings that are used as alternatives to the prescriptive openings in the walls of enclosures below elevated buildings in A zones (see FEMA Technical Bulletin 1, *Openings in Foundation Walls and Walls of Enclosures Below Elevated Buildings in Special Flood Hazard Areas*)
- In coastal high hazard areas, engineering certifications of designs and construction methods of new and substantially improved buildings (5.6.9)
- Designs for breakaway walls around enclosures below elevated buildings in V zones if prescriptive solutions are not used (see FEMA Technical Bulletin 9, *Design and Construction Guidance for Breakaway Walls Below Elevated Buildings Located in Coastal High Hazard Areas*)

- Evidence that work proposed for listed historic structures will not preclude continued listing (Section 6.5.1)
- Variance proceedings, including justifications and notifications to recipients (Section 5.6.7)
- Record of final inspections of the construction project before the certificate of occupancy is issued, such as location and size of openings, location of utilities, and "as-built" lowest floor elevation
- Certification of the elevation to which any nonresidential building has been floodproofed before the certificate of occupancy is issued

Although the use of checklists is not required by the NFIP, it is a good way to document plan reviews, inspections, and compliance. Some communities use checklists during plan reviews to verify that appropriate flood damage-resistant provisions have been checked and found to satisfy the applicable requirements. Similarly, the use of inspection checklists improves the consistency of inspections and helps verify the flood damage-resistant requirements.

5.6.15 Issuing SI/SD Determination Letters

Local officials should convey SI/SD determinations to property owners in an official letter. Because this letter notifies the owners of a significant requirement, it is recommended that it be sent in a manner that documents receipt by the addressee. Appendix E includes three sample letters to send SI/SD determinations to property owners. One sample is used to notify owners when a local official determines that proposed improvements are substantial improvements. Another sample is used to notify owners when a local official determines that buildings have sustained substantial damage. The third sample is used to notify owners that it has been determined that damage does not constitute substantial damage. The local official should offer to meet with owners or representatives to explain the various aspects required for buildings to meet the community's floodplain management regulations for new buildings, explained in Chapter 6.

> If substantial damage is caused by flooding and the buildings are insured by the NFIP, then the SD determination letter is necessary for owners to file ICC claims under NFIP flood insurance policies to help pay to bring the buildings into compliance with the community's floodplain management requirements (Sections 5.6.4 and 7.6).

5.6.16 Rescinding SI/SD Determinations

Local officials use data to make findings and determinations regarding whether work constitutes substantial improvement or repair of substantial damage. The data, described in detail in Chapter 4, consist of the cost estimates of the proposed improvements or the cost estimates of work that is required to repair damaged buildings to their pre-damage condition, regardless of the amount of work that will be done. The data also include the market values of buildings prior to the improvement or before the damage occurred.

Determinations usually are based on data provided by the owner, the owner's representative, or a contractor. Other sources of repair costs and improvement costs and market value are described in Chapter 4.

Following receipt of an SI/SD determination, property owners may appeal the determination (Section 5.6.6) or may submit new data and request that the initial determination be rescinded. When new data are provided, local officials should evaluate it carefully. Rescinding a determination means the owner's investment in a flood-prone area would take place in a manner that continues the exposure of the existing structure and the investment to flood damage. Communities should thoroughly document and retain evidence of any appeals and changes to SI/SD determinations in their permanent records.

5.7 Exceeding NFIP Minimum Requirements

Some States and communities have adopted requirements for SI/SD that exceed the NFIP minimum requirements to better protect their citizens and property. The NFIP encourages communities to evaluate their own situations, degree of flood risk, and vulnerability of their residential and commercial properties, and to consider adopting requirements that are more restrictive in order to achieve the long-term goal of being more resistant to flood disasters. The more restrictive provisions take precedence. Many communities adopt higher standards in order to qualify for credit under the NFIP's Community Rating System (CRS). Section 5.7.1 is an overview of the CRS, a voluntary program that provides discounts on Federal flood insurance rates.

In 2003, the Association of State Floodplain Managers, Inc. (ASFPM) reported that several States have requirements that exceed the NFIP minimum requirements for substantial improvement. In these cases, State requirements take precedence.

The CRS has three goals:

1. Reduce flood losses
2. Facilitate accurate insurance rating
3. Promote awareness of flood insurance

In terms of higher standards that relate to SI/SD, the two approaches that exceed the NFIP minimums are:

- Lower threshold for SI/SD (Section 5.7.2)
- Cumulative SI/SD (Section 5.7.3)

5.7.1 Community Rating System

The NFIP established the Community Rating System to encourage activities that exceed the NFIP minimum requirements and are effective at reducing flood damage and claims under the NFIP. In communities that apply to the CRS and are verified as implementing certain activities, citizens who purchase Federal flood insurance benefit from discounts on premiums ranging from 5 percent to as much as 45 percent.

For more than 40 years, communities that participate in the NFIP have recognized flood hazards in their construction and development decisions. Until 1990, the NFIP had few incentives

for communities to do more than administer the minimum NFIP regulatory provisions. During those early years, flood insurance rates were the same in every community, even though some elected to exceed the minimum provisions.

The CRS is a voluntary program. Any community that is in full compliance with the regulations of the NFIP is considered to be in "good standing" and may apply for a CRS classification. A community's CRS classification is a ranking based on the credit points calculated for specific floodplain management activities undertaken to meet the goals of the NFIP and the CRS. There are 18 creditable activities organized under 4 categories. One category includes more restrictive requirements for work on existing buildings.

The CRS offers credits to communities that adopt more restrictive requirements for SI/SD.

CRS credits are available to communities that adopt more restrictive SI/SD requirements:

- 43 CRS communities get credit for a lower threshold for SI/SD
- 289 CRS communities get credit for cumulative SI/SD

(Data as of October 2009)

The discount on NFIP flood insurance premiums is only one incentive for communities to undertake activities credited by the CRS. The larger benefits are improved public safety, reduced damage to property and public infrastructure, avoidance of economic disruption and losses, reduction of human suffering, and protection of the environment.

Additional information about the CRS can be found through the appropriate NFIP State Coordinator, the appropriate FEMA Regional Office, by downloading the *Coordinator's Manual* at the CRS Resource Center (http://training.fema.gov/EMIWeb/CRS), or by checking the NFIP CRS section of FEMA's website at http://www.fema.gov/business/nfip/crs.shtm.

5.7.2 Lower Threshold for SI/SD

The NFIP's threshold for determining whether proposed work constitutes substantial improvement, or repair of substantial damage, is 50 percent. Compliance is required when the costs of an improvement or the costs to repair damage equal or exceed 50 percent of a structure's market value.

Adopting a lower threshold, such as 40 percent or 30 percent, is perhaps the easiest way to exceed the NFIP minimum requirement. The concept is simple – compliance is required when the ratio of costs compared to market value equals or exceeds the lower percentage specified in the community's regulations. Communities should make certain that they uniformly apply the lower threshold to all buildings in SFHAs, even after events that cause damage to many buildings, regardless of the cause of the damage.

Additional guidance for regulatory language and implementation of a lower threshold for SI/SD is found in *CRS Credit for Higher Regulatory Standards*, which is accessible online (http:// www.fema.gov/library/viewRecord.do?id=2411).

5.7.3 Cumulative SI/SD

Many pre-FIRM buildings are subject to repetitive flood damage. Because of the nature of many flood hazard areas where repetitive flooding occurs, many of the buildings in these areas are unlikely to sustain the level of damage that qualifies as substantial damage based on the NFIP minimum 50 percent trigger. One way that communities can achieve long-term reduction of flood losses is to adopt a requirement that all improvements and repairs are tracked over time and counted towards the SI/SD determination. Another reason some communities take this approach is to capture "phased improvements," described in Section 5.6.2.

Adopting what is usually referred to as a "cumulative substantial improvement" requirement means that buildings will be brought into compliance with flood damage-resistant standards sooner than if the community administers the minimum NFIP requirement, which applies to each separate application for improvements and repairs.

The following change to the definition of "substantial improvement" is an example of how a cumulative substantial improvement requirement can be implemented (suggested new text is underlined). A more limited approach would be to count only repairs of damage (not improvements) in a cumulative manner. Communities should carefully consider the period of time to specify, whether the "life of the structure" or a specific period of time, such as 5-, 15-, or 30-years.

> *"Substantial improvement" means any <u>combination</u> of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure <u>taking place during [insert period of time selected by the community]</u> the cost of which equals or exceeds fifty percent of the market value of the structure before the work is started. This term includes structures that have incurred 'substantial damage,' regardless of the actual repair work performed.*

A good system for recording and accessing records is necessary to administer a cumulative SI/SD requirement. Each time an owner applies for a permit to make improvements or repairs, the records for that building must be checked. Obviously, this is feasible only if those records are retained over the period of time specified in the regulations.

Tracking the cost of repairs and improvements over time is straightforward but, for the purpose of making SI/SD determinations, the community must have a market value to compare to those costs. Because the market value of a building changes over time, communities need to decide how they will handle those changes. One approach is to obtain the market value each time a permit is obtained, use it in the computation each time, and add the resulting percentages. Communities may choose to accumulate percentages or repair/improvement costs over a set period of years. Table 5-1a illustrates this approach where market value increases steadily, and Table 5-1b illustrates this approach where the market value first decreases and then increases.

Table 5-1a. Tracking Cumulative Substantial Improvements, Determining Market Value for Each Permit Application (shows increases in market value).*

Elapsed time from initial permit application	Current market value (at the time of each permit application)	Cost of improvement	Cost as percentage of current market value	Cumulative percentage
0 year	$100,000	$10,000	10%	10%
3 years	$110,000	$42,000	38%	48%
6 years	$120,000	$10,000	8%	56%

* In this example, the 50 percent threshold is reached with the third permit application.

Table 5-1b. Tracking Cumulative Substantial Improvements, Determining Market Value for Each Permit Application (shows decrease, then increase in market value).*

Elapsed time from initial permit application	Current market value (at the time of each permit application)	Cost of improvement	Cost as percentage of current market value	Cumulative percentage
0 year	$100,000	$10,000	10%	10%
3 years	$90,000	$28,000	31%	41%
6 years	$105,000	$10,800	10%	51%

* In this example, the 50 percent threshold is reached with the third permit application.

Communities will only have records of work for which permits are required. Owners may undertake work that does not require a permit (e.g., patching a roof or replacing a window) and those costs would not count towards the cumulative substantial improvement. It is not the intent of a cumulative substantial improvement requirement to discourage general maintenance and upkeep. However, if any part of the work requires a permit, then all of the proposed work is counted in the SI/SD determination. For example, as part of a project to repair roof damage that involves replacing rafters and underlayment, the owner may decide to replace shingles on an undamaged portion of the roof. The cost of the re-shingling is included in the determination.

Additional guidance for regulatory language and implementation of a cumulative substantial improvement requirement is found in *CRS Credit for Higher Regulatory Standards.*

5.8 Recommendations to Improve Flood Resistance

Local officials can encourage owners to improve the flood resistance of older buildings during the course of repairs and improvements even if owners propose improvements or repairs that do not trigger the SI/SD requirements. Improving resistance can facilitate rapid clean-up and recovery, and reduce repair costs. Whether these actions are applicable to a specific situation depends, in part, on the characteristics of the flood hazard and the building:

- Replace gypsum board or wood paneling below the BFE (preferably below the BFE plus 1 foot or more) with vinyl panels that can be removed to facilitate clean-up and drying before being reinstalled.
- Replace insulation with closed-cell foam insulation that can be cleaned, dried, and replaced.
- Replace flooring and floor finishes with flood damage-resistant materials.
- Relocate mechanical equipment out of basements or other flood-prone spaces and elevate above the BFE.
- Abandon the use of below-grade areas (basements) and fill them in to prevent structural damage.
- Install flood openings in crawlspace foundation walls and garage walls (see FEMA Technical Bulletin 1, *Openings in Foundation Walls and Walls of Enclosures Below Elevated Buildings in Special Flood Hazard Areas*).
- Install backflow devices in sewer lines.
- If sufficient warning time is available from official sources, pre-plan actions to move contents from the lower floors to the higher floors when a warning is issued.

POLICY AND PROCEDURES MANUAL FOR THE REDINGTON SHORES BOARD OF COMMISSIONERS AND TOWN OFFICIALS

ADOPTED BY RESOLUTION 01-23

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PROCEDURES FOR THE REDINGTON SHORES BOARD OF COMMISSIONERS' MEETINGS AND TOWN OPERATIONS

PREAMBLE AND STATEMENT OF INTENT

Consistent with the requirements of Chapters 166, 163 and 286, Florida Statutes, and other applicable law, the Redington Shores Board of Commissioners has adopted these rules (hereinafter, the Commission Procedures) to govern its meetings, hearings, and workshops, and to address the workflow of Town administrative officials. As to meetings of the Board of Commissioners, while encouraging appropriate public participation and an informal and civil atmosphere, the Board of Commissioners intends to maintain the structure and decorum required for the orderly, efficient, and professional conduct of its business.

1. APPLICABILITY.

These Commission Procedures shall govern and be applicable to the meetings, hearings, and workshops of the Redington Shores Board of Commissioners, and in accordance with Town Code § 5-6(b), to any subordinate boards, commissions or advisory committees created by the Commission. If any such subordinate bodies adopt their own additional procedures, such procedures shall not be materially inconsistent with these Procedures, and shall first be reviewed by the Town Attorney to ensure legality. These Procedures shall also be applicable to the Town Administrator and the administrative functions of the Town to the extent provided for herein.

2. OFFICIAL COMMISSION ACTION.

2.1 APPLICABILITY; MATTERS FOR BOARD CONSIDERATION. Any matters that relate to the Commission's duties, authority or powers under the Town Charter, Florida Statutes Chapter 166, or other applicable law, or which relate to the Town's property, legal or financial interests, or to the public health, safety or welfare of the Town and its residents, may be brought before the Commission for appropriate consideration or action.

2.2 DELEGATION OF AUTHORITY. The Town of Redington Shores acts through its Board of Commissioners and the authorized actions of its employees, agents, and legal representatives. To the extent permitted by law, the Commission may delegate its authority to perform action on behalf of the Town. In delegating authority, the Commission shall provide sufficient guidelines and expression of its objectives to enable efficient performance of the action for which the authority has been delegated.

2.3 DESIGNEES. Wherever these Commission Procedures delegate authority or responsibility to the Town Clerk (the Clerk) or the Town Administrator, such authority or responsibility is understood to extend to his or her respective designee. However, this delegation of duties does not relieve the delegating officer for ultimate responsibility for said delegation.

3. ADMINISTRATIVE OFFICERS.

3.1 CLERK OF THE COMMISSION. Pursuant to § 11B of the Town Charter, the Town Clerk/Treasurer shall ensure meetings of the Commission are noticed as required by law, keep the official minutes of the Commission's meetings, and authenticate by his or her signature and record in full in a book kept for the purpose all ordinances and resolutions. Pursuant to § 17 of the Town Charter, the Town Clerk shall also be the Town Treasurer and, as such, shall be custodian of all moneys, including depositing funds and moneys into appropriate depositories or accounts, and shall keep the same in such manner and place as provided by the Town Commission.

3.2 ADMINISTRATOR. Pursuant to § 1-20 of the Town Code, the Town Administrator shall serve as the chief administrative officer of the town and shall be responsible for directing, coordinating and managing the administration of the town's business, as performed through the town's employees and contractors. Pursuant to § 1-20(H), the Board of Commissioners will conduct an annual review of the Administrator's performance, and may conduct such additional evaluations at any other times it determines, using such method of review as the Commission establishes.

3.3 QUORUM AND OFFICERS.

3.3.1 A quorum exists when a majority of the Commissioners are present, physically or electronically. Unless otherwise provided by law, Charter or Town Code, a majority vote, where a quorum is present, constitutes action of the Commission.

3.3.2 In the absence of the Mayor-Commissioner, the Vice Mayor-Commissioner shall have all the duties and authority of the Mayor-Commissioner until the arrival of the Mayor-Commissioner. In the absence of the Mayor-Commissioner and Vice Mayor-Commissioner at the time scheduled for the opening of a public meeting or workshop, the remaining three Commissioners shall select a Commissioner to preside over the meeting until the Mayor-Commissioner or Vice Mayor-Commissioner becomes present, physically or electronically. In the absence of a required quorum, those Commissioners assembled, including a single Commissioner, if only one is present, may take measures to obtain a quorum, fix the time to which to adjourn or take a recess, and open and continue a public hearing on any scheduled matter to a time and date certain, but shall take no testimony and conduct no other business. Nothing in this Section 3.3 shall limit any procedure, rules, statutes, or other lawful authority governing the conduct of business in the event of a disaster or emergency.

3.3.3 A Commissioner seeking to attend all or any portion of a meeting via electronic means shall inform the Clerk with as much advance notice as possible. The Clerk shall inform the other Commissioners of the

Commissioner's intent to appear electronically. The Clerk and Administrator shall ensure the chambers is appropriately equipped to permit any audio/video interaction needed. The term "appropriately equipped" shall mean that level of equipment allowing Commissioners attending electronically to hear fellow Commissioners and any person presenting at the microphone; allowing all other Commissioners and all persons attending in the Chambers to hear Commissioners attending electronically; and for matters expected to include video or graphic presentations, the ability of Commissioners attending electronically to view via a video feed the same images seen by Commissioners physically attending.

3.3.4 It is generally expected that Commissioners will attend meetings in person whenever possible, and that Commissioners should not seek to attend remotely based solely on convenience. While electronic attendance is permitted where necessary, including when a Commissioner is incapacitated due to illness or injury or hindered by logistical circumstances from physically attending, a remotely-appearing Commissioner must otherwise be able to concentrate and give his/her attention to the business of the Commission

3.3.5 Given the importance of a Commissioner's ability to assess witness credibility, and to review documents, videos, photographs, and other exhibits admitted into evidence when the Commission is sitting in a quasi-judicial setting, Commissioners should make every effort to attend in person meetings at which a quasi-judicial matter is on the agenda.

3.4 APPOINTMENT OF COMMISSION MEMBERS TO OTHER BOARDS.

The Commission may appoint individual Commissioners to serve on any county, state or federal board, commission, committee or workgroup either when a Town appointment is required by law or interlocal agreement, or where the governmental entity at issue has invited the Town to appoint a representative, unless accepting such appointment would constitute dual office holding. While individual members of the Board of Commissioners may elect privately to serve on non-governmental boards or committees (such as non-profits or homeowner association boards), such service shall be a private matter, the Commission will not make such appointments, and the serving Commissioner's actions on such private boards or committees shall not constitute Town action for any purpose.

3.5 DEPARTMENTAL OVERSIGHT.

The Town anticipates handling its various tasks by paid staff, volunteers, and outside contractors with oversight, operational policy, and priority guidance from the commissioners. To provide and coordinate this oversight and departmental guidance, the Mayor-Commissioner shall, with the agreement of the commissioner involved, assign to individual commissioner's, departmental oversight and

guidance responsibilities, defining rolls to minimize overlapping areas between the commissioners, deciding (subject to any needed commission approval) any conflicts between commissioners stemming from their operational assignments. The Mayor-Commissioner shall further provide general oversight on the Town's operations. Assignment of departmental responsibility to a commissioner shall be reported at the next meeting of the commission but does not need commission approval.

COMMISSION DEPARTMENTAL RESPONSIBILITIES

Administration
General Administration Policies
Policy Manual
Employee Policy
Solid Waste/Recycling Contract
Other Contracts such as; Interlocal, Governmental, or Service Providers
Contract Bidding
Ordinances
Resolutions
Elections
Town Hall Security
Code Book Updates
Public Notifications
Computer Operations / Maintenance
Telephone Service
Approval of Checks
Attorney Contracts
Office Employee Training
Office Employee Compensation
Office Employee Performance

Maintenance
All repairs except sewer
Town Maintenance Equipment
Town Garage
Safety Policy
Christmas Decorations
Beach Maintenance
Road and Sign Maintenance
Building Maintenance
Plumber Contracts
Electrician Contracts
Implementation of the Stormwater Management Plan
Implementation of the Traffic Island Plan
Maintenance Employee Training
Maintenance Employee Compensation
Maintenance Employee Performance

Sewer
Sewer System Performance
Sewer Operation Manual
Sewer Maintenance and Repair
Septic Service Contracts
Cleaning Contracts
County Water Department
Sewer Employee Training
Sewer Employee Compensation
Sewer Employee Performance

Social
Town Activities
- Picnic
- Fireworks
- Boat Parade
- House Decorating

Stormwater / Flood
Stormwater Management / Maintenance Plan
Stormwater Utility Uses
Stormwater Improvements
NPDES

Police
Police Contract
Police Services

Emergency Management
Emergency Management Activities
Evacuation Plans
Flood Plain Management

Fire
Fire Protection Services
Emergency Services

Finance
Accounting System
Accounting Policy
Auditor Contracts
Annual Budget
Performance to Budget
Insurance
Rates for Services
- Occupational Licenses

Sewer Services
Garbage Rates
Franchise Fees
Annual Report
Fund Transfers
Lease Contracts and Rates

Building
Building Department Policy
Building Permits
Certificate of Occupancy
Flood Insurance Supervision
Occupational Licenses
Planning and Zoning Board
Zoning Changes
Sign Regulations
Code Enforcement
Comprehensive Land Use Plan
Building Inspector Training
Building Inspector Compensation
Building Inspector Performance

Parks and Recreation
Park Acquisitions
Park Improvements
Park Equipment
Park Policy
Town Hall Community Room Policy
Youth Activities
Youth Policy

Other – To Be Assigned
Mayors' Council
Chamber of Commerce Activities
Barrier Island Governmental Council
Florida League of Cities
Suncoast League of Cities
Library Contract
PSTA
Forward Pinellas
Beaches & Shores

4. MEETINGS.

4.1 TYPES OF PUBLIC MEETINGS. The Commission shall have the authority to hold the types of meetings set forth below:

4.1.1 **Regular Meetings.** The Commission may establish and announce a regular meeting schedule. The schedule may include regular and special meetings, including meetings primarily focused on items considered under or specifically related to the Town's Comprehensive Plan or Land Development Code which may also be designated Land Use Meetings. All regular meetings shall ordinarily commence on the second Wednesday of the month at 6 p.m. in the Town Hall Chambers. Any noticed regular meeting may be commenced earlier or later, postponed or canceled, or held in a different location pursuant to a motion adopted at a regular meeting, except that no quasi-judicial proceeding shall be conducted on a date or at a time different than the date and time which had been noticed for that matter to be heard.

4.1.2 **Special Meetings.** A special meeting of the Commission may be called by the Mayor-Commissioner, the Vice Mayor-Commissioner, or may be set by a majority of the Commissioners present at a meeting of the Commission. Whenever a special meeting is called, it shall be posted on the Town's website and notice shall be given by the Clerk to Commissioners, the Town Attorney, and any persons entitled to notice as a matter of law, stating the date, hour and place of the meeting, and the purpose(s) for which the meeting is called. At least twenty-four (24) hours must elapse between the time the meeting is noticed and the time the meeting is to be held. While the Commission's discussion of topics need not be confined to the matters noticed for a special meeting, the Commission may not take any action on a matter not included in the noticed special meeting agenda.

4.1.3 **Emergency Meetings**. An emergency meeting may be called by the Mayor-Commissioner or the Vice Mayor-Commissioner. An emergency meeting may be called only when the official calling the meeting believes that circumstances exist that may involve serious legal, financial or safety consequences for the Town or its residents requiring immediate consideration or action by the Commission. Whenever such emergency meeting is called, the Clerk, or if she or he is unavailable, the Town Administrator, or if he or she is unavailable the official calling the meeting, shall make a diligent and good faith attempt to telephonically or by email notify each Commissioner, the Clerk, the Town Administrator, the Town Attorney, members of the local news media, and any persons entitled to notice as a matter of law, informing them of the date, hour, and place of the meeting, the nature of the emergency, and the purpose(s) for which the meeting is being called. No other business shall be transacted at the meeting other than Commission actions required to respond to the emergency, and the minutes of each emergency meeting shall include the nature of the emergency and shall set forth the efforts made to provide notice.

4.1.4 **Workshops**. The Commission may hold workshops from time to time for consideration of matters that are not ready for Commission action or for mere information gathering purposes. Regular workshops normally occur on

the last Wednesday of the month at 2 p.m. No final vote or other approval action may be taken at workshops.

4.1.5 **Public Notice.** The Clerk shall provide public notice of all meetings and workshops in accordance with law. The minutes of all meetings shall include the Clerk's confirmation that the meetings were noticed as provided for by law.

4.2 CLOSED SESSIONS.

4.2.1 **Litigation Meetings.** The Town Attorney and other attorneys representing the Town may meet in private session with the Commission to discuss pending litigation to which the Town is a party before a court or administrative agency so long as such meetings are noticed, held and reported, and the records thereof preserved and made available to the public upon conclusion of the litigation in compliance with Florida Statutes § 286.011(8).

4.2.2 **Risk Management Meetings.** Portions of the Commission's meetings and proceedings that are conducted pursuant to the Town's risk management program and that relate solely to the evaluation of claims filed with the risk management program, or that relate solely to offers of compromise of such claims, may be held in private session, so long as such meetings or portions of meetings are held and a record thereof is preserved in compliance with Florida Statutes § 768.28(16). In accordance with Florida Statutes § 768.28(16)(d), the minutes of risk management meetings and other records thereof are exempt from public disclosure until termination of all litigation and settlement of all claims arising out of the same incident.

4.2.3 **Collective Bargaining Meetings.** As provided in Florida Statutes § 447.605, all discussions between the Commission and the Town Attorney relative to collective bargaining shall be closed and exempt from the provisions of Florida Statutes § 286.011.

4.3 PREPARATION OF AGENDA.

4.3.1 **Administrator and Clerk.** The Town Administrator shall confer with the Clerk prior to all scheduled Commission meetings and workshops to set an agenda. Once set, the Clerk shall prepare and publish the agenda, and assemble the accompanying agenda materials for posting on the Town website and distribution to Town officials. Commissioners must receive copies of the agenda materials (in either paper or electronic form as each Commissioner requests) by noon on the Friday before all regular Commission meetings and workshops.

4.3.2 **Town Attorney.** The Town Attorney will notify the Administrator if she or he requests an item be placed on the agenda, and may add supplemental items to the agenda whenever, in the discretion of the Town Attorney, such items require Commission attention at that meeting to preserve the Town's legal interests or position.

4.3.3 **Commissioner.** Any Commissioner may, request an item be placed on the agenda of a regular meeting. Unless adding the item to the agenda would violate any applicable legal notice requirements, the Administrator shall add the item. If a Commissioner adds an agenda item, the Commissioner must submit any supporting materials to the Clerk for publication by 2 p.m. on the Thursday before the meeting.

4.3.4 **Items Not on Agenda.** Matters that do not require separate public or other legal notice may, with the consent of the majority of the Commissioners present, be added to the agenda of any regular (but not special or emergency) meeting, and may thereafter be considered and acted upon.

4.3.5 **Adoption Not Required.** The Commission is not required to adopt or approve the agenda for any meeting. The Commission reserves the right, once a meeting has been convened, to add, remove, or relocate any agenda items as it deems necessary or advisable, except that quasi-judicial matters may not be begun prior to the time set forth in the notice.

4.4 CONTINUANCE OF MEETINGS DUE TO EMERGENCY.

Where necessary to continue a public meeting due to an emergency and where the full Commission is not assembled, the Mayor-Commissioner, Vice Mayor-Commissioner, a Commissioner, the Clerk, the Administrator, or the Town Attorney are hereby delegated authority to continue the meeting to a date certain or indefinitely. The continuance shall be announced at the time and place where the meeting was scheduled to begin and, where possible, shall be publicly announced prior thereto to provide reasonable public notice thereof.

For purposes of this rule, an "emergency" means an emergency as defined in Florida Statutes§ 252.34(3), or as declared by the Governor of Florida, the Board of County Commissioners, or the Town Commission, or a natural or manmade disaster or threat thereof that in the reasonable judgment of the Mayor-Commissioner or the Town's chief law enforcement officer renders the meeting environment unduly dangerous to the Commission, staff or the public.

5. CONDUCT OF MEETINGS.

5.1 GENERALLY. On the day and at the hour set for each meeting, members of the

Commission, the Clerk, the Administrator, and the Town Attorney shall be seated and the business of the Commission shall be taken up in accordance with the agenda advertised for the meeting. The Administrator, at his or her discretion and in light of the anticipated agenda items, may require that either the designated Town Planner or Town Building Official also be in attendance. The presiding officer may, with the assent of the Commission, take business out of order if she or he determines that such a change will expedite the business of the Commission, will accommodate a large group of residents present to address a particular item, will accommodate recognition of a public official present to make a presentation, or will otherwise be in the Town's best interest.

5.2 RULES OF DEBATE.

5.2.1 **Questions Under Consideration.** When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except to adjourn, to recess, to end debate, to 'lay on the table' (i.e., to postpone indefinitely), to continue or defer to a date uncertain (i.e., to postpone until the occurrence of an independent event which will definitely occur at an unknown time), to continue or defer to a date certain, or to amend a motion currently on the floor. These types of motions shall have precedence in the order in which they are mentioned, and motions to adjourn, recess, or to end debate shall be decided without debate. Upon the request of the Town Administrator or Town Attorney, made prior to final action on any matter, that the matter be deferred or continued to a future Commission agenda, the Commission shall vote on whether to defer or continue the matter as requested prior to continuing to consider the matter.

5.2.2 **Motions/Seconds by the Mayor-Commissioner.** The Mayor-Commissioner may second any motion. As the presiding officer, the Mayor-Commissioner may not make any motion unless she/he relinquishes the gavel to the Vice Mayor-Commissioner. The Mayor-Commissioner shall not recover the gavel and resume presiding over the meeting until the motion is withdrawn or acted upon.

5.2.3 **Discussion.** Every Commissioner desiring to speak shall notify the presiding officer and, upon being recognized, shall confine him or herself to the question under debate. At her or his discretion, the presiding officer may allow two members to dialogue with each other to obtain information or clarification on an issue under discussion. Otherwise, all comments should be directed to the presiding officer.

5.2.4 **Interruption.** A Commissioner, once recognized, shall not be interrupted when speaking unless it is to call that Commissioner to order or as herein otherwise provided. If a Commissioner, while speaking, is called to order (a "point of order" is used to object to point out an approved procedure is not being followed or to point out a personal affront), or if a question of personal privilege is raised (a "point of personal privilege" is an

opportunity to raise issues such as disruptive noise, inadequate ventilation, or introduction of a legally confidential subject in the presence of those not entitled to knowledge thereof), the Commissioner who had the floor shall cease speaking until the question of order or privilege is addressed or ruled upon by the presiding officer. If ruled in order, the challenged Commissioner shall thereafter be permitted to proceed. A ruling of the presiding officer on a point of order may be overturned by a majority vote of the Commission.

5.3 **ADDRESSING THE COMMISSION.** A member of Town staff who addresses the Commission shall be identified and shall use a microphone to allow her or his comments to be heard by those in attendance and properly recorded by the Clerk. All residents or other persons addressing the Commission shall do so from the speaker's lectern facing the Commission unless a disability requires a different location and use of a portable microphone. Time limits on members of the public addressing the Commission shall be as set forth below or as otherwise established by the Mayor-Commissioner or the Commission, and shall be monitored and enforced by the Clerk or Administrator.

5.3.1 **Public Comments as to Consent Agenda Items.** Subject to sections 5.4.2 and 5.4.3, before voting on the consent agenda at any regular or special meeting, the Commission shall allow individual members of the public to address the Commission as to any consent agenda items. Persons commenting on the consent agenda shall be limited to three (3) minutes for each such item, but shall be limited to a total of ten (10) minutes to address all consent agenda items she or he desires to address. Public comment prior to approval of the consent agenda items is not permitted to the extent the comment is directed at the adoption of minutes or ceremonial proclamations, or other similar ministerial acts.

5.3.2 **Public Forum**. Subject to § 5.4.2 and § 5.4.3, the Commission will provide on its agenda for regular (but not special or emergency) meetings, a period for public comments on matters which are ***not*** on the agenda, ***and*** which address matters which may be appropriate for the Town Commission to act on at a future meeting. This portion of the meeting will occur at the end of the meeting agenda, after the Commission has acted on all other agenda items. Each person speaking during the public forum shall be limited to three (3) minutes. At any special meeting or Commission workshop, the Commission may, in its sole discretion, permit members of the public in attendance to provide comments of no longer than three (3) minutes, but such comments must only address the subject being discussed at the meeting or workshop.

5.3.3 **Speaker Cards.** Persons wishing to speak on any matter on the agenda, including public forum, are required to complete the speaker information cards available from the Town Clerk before the meeting. Cards are to be returned to the Town Clerk who will organize them by agenda matter and provide them to the presiding officer so each person desiring to speak

can be called when the appropriate point during the meeting occurs. The presiding officer may, with the assent of the Commission, allow persons who did not fill out speaker cards to speak on a matter, but such persons will also be required to provide their name and address for the record and complete a speaker card after the fact. Persons refusing to provide their name and address will not be permitted to provide comments.

5.3.4 **Matters not on the agenda.** While Florida law does not require a matter to appear on a published agenda before it is acted on, the Commission always desires to provide notice to Town residents in advance of a vote. Therefore, as to matters not on the published agenda but which are added to the agenda at the meeting, the Commission will not ordinarily take action at the same meeting wherein a matter is first raised, but may direct that the item be placed on a future agenda. However, the Commission reserves the right to vote on matters added to the agenda where the matter is either minor in nature, addresses a matter of internal Town operations or staffing, or where a deadline (such as a grant application deadline) would not provide enough time for the item to wait to the next agenda.

5.3.5 **Public Forum not created.** Nothing in this section 5.3 is intended to create a general public forum for discussion, debate or comment on any matter an individual desires to discuss. Town Commission meetings occur so as to conduct the pending Town business and, to that end, must proceed as efficiently as possible.

5.3.6 **Right to Speak.** Pursuant to Florida Statutes § 286.0114, subject to the Commission's right to maintain orderly conduct and proper decorum, members of the public shall be given a reasonable opportunity during the decision-making process to be heard on a proposition before the Commission. However, the statute also provides that an invitation for comment need not be afforded where: (a) an official act must be taken to deal with an emergency situation affecting the public health, welfare, or safety, where providing for comments would cause an unreasonable delay in the ability of the Commission to act, (b) the act involves no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations, (c) the meeting is exempt from the Sunshine pursuant to law, or (d) the meeting is one in which the Commission is acting in a quasi-judicial capacity.

5.4 ORDERLY MEETINGS.

5.4.1 The presiding officer shall preside at the meetings, shall ensure order is maintained, that the procedural rules are followed, and shall initially rule upon all procedural questions. In making a ruling, the presiding officer may consult with the Town Attorney, as parliamentarian, as to the applicable rules of order. The ruling of the presiding officer on a procedural issue can only be overturned by a Commission majority vote.

5.4.2 All persons in attendance at a Commission meeting, hearing, or workshop shall conduct themselves in a civil manner and refrain from actions that disrupt the meeting or hinders the Commission in performing its duties. To these ends, such persons are prohibited from:

- committing acts of violence toward any person;
- making threats of violence or speaking "fighting words" that are likely to provoke violence;
- disrupting the proceedings with excessive commotion or excessively loud shouting or other noise or use of obscene or crude language;
- interfering with the rights of others to speak, hear, see, or attend the proceedings;
- being unduly repetitious or presenting matters not relevant to the agenda item under consideration;
- speaking on a subject about which the Commission has already taken a position or about which the Commission has voted not to receive further comment;
- making ad hominem (in a way that is directed against a person rather than the position they are maintaining) attacks or insults against any person;
- continuing to speak after the allotted time has expired or after having been ruled out of order; or
- speaking on a subject that is clearly outside the purview of section 2.1

5.4.3 The presiding officer shall rule out of order any person(s) violating these provisions for orderly meetings. In appropriate situations (e.g., if such person(s) refuse to cease such violations), the presiding officer may have such person(s) removed from the meeting, hearing, or workshop by law enforcement personnel, or take such other actions as may be reasonably necessary to maintain order and enforce these requirements.

5.5 PUBLIC HEARINGS.

5.5. 1 **Explanation of Terms.** For purposes of these Commission Procedures, unless the context requires otherwise, the following terms have the definitions set forth or the usages explained below:

"Public Hearing" - refers to a hearing where the public is both

invited and entitled to be heard on a matter pending before the Commission, typically requiring an advertisement on the Town website or in a local newspaper of the matter to be considered. Some examples are hearings to consider adoption, repeal, or amendment of ordinances, or in some cases, resolutions.

"Quasi-Judicial Hearing" - refers to a type of public hearing in which the Commission is required to assume a more adjudicatory role, as distinguished from a legislative role. In quasi-judicial hearings, certain procedural requirements are imposed by law. The following types of public hearings shall be conducted as quasi-judicial hearings: individual parcel zoning atlas amendments; development agreements if accompanied by a quasi-judicial development application; developments of regional impacts ("DRI"); consideration of a general development plan or site plan application; an appeal to the Commission of an administrative determination if provided for by Town Code; and such other hearings as may be required by law to be treated as quasi-judicial.

"Applicant(s)" - means person(s) who has/have duly made formal application for Commission action or approval in a quasi- judicial context of an item affecting their legal or property rights.

"Proponent(s)" - in a quasi-judicial setting, means person(s) other than an applicant, who support an applicant's position; or, in other settings, means person(s) who favor adoption of an ordinance or resolution or an affirmative decision on a matter under consideration by the Commission.

"Opponent(s)" - in a quasi-judicial setting, means person(s) who oppose an applicant's position; or, in other settings means persons who oppose adoption of an ordinance or resolution or an affirmative decision on a matter under consideration by the Commission.

"Affected Persons" - means an applicant in a quasi-judicial hearing or an opponent or proponent whose interest and involvement in a public hearing matter is such that he or she would have legal standing under Florida law as a party in court or administrative litigation challenging Commission action in the matter.

5.5.2 **Conduct of Public Hearings (Non-Quasi-Judicial).** Public hearings involving (a) non-quasi-judicial matter(s) shall ordinarily proceed in the following manner:

5.5.2.1 Initial Presentation by Staff. Town staff or attorney shall make

the initial presentation to the Commission regarding any item under consideration.

5.5.2.2 Public Comment. After presentation by staff or attorney, the presiding officer shall open the public comment portion of the public hearing for the purpose of hearing persons who want to be heard on the item under consideration.

5.5.2.3 Closing of Public Comment. The presiding officer shall close the public comment portion of the public hearing upon the conclusion of the comments of the last appropriate speaker or the expiration of the speaking times allowed under the procedures. Thereafter, unless time for public comment is extended or public comment is re-opened in accordance with these procedures, no additional public comments shall be allowed except in specific response to questions by staff or Commissioners.

5.5.2.4 Staff Response and Summary. After public comment is closed, staff shall be allowed an opportunity to respond, to summarize, or to further explain staff's position and to advise of changes in staff's position, if any.

5.5.2.5 Inquiry, Clarification and Comments During Presentations. It is the intent of the Commission that its public hearings be orderly and to that end interruption of presentations is ordinarily to be avoided. It is also the intent of the Commission that a complete record of relevant facts be established and a complete understanding of the matters under consideration be obtained. Accordingly, the presiding officer, at any time during a public hearing, may allow Commissioners to comment or make inquiry of persons addressing the Commission, or of staff or other persons in attendance, or may allow staff, Town consultants, or the Town Attorney to comment or make such inquiries.

5.5.3 Conduct of Quasi-Judicial Public Hearings.

5.5.3.1 Oath or Affirmation. Prior to addressing the Commission at a quasi-judicial public hearing, each person who intends to provide testimony to the Commission (including citizens not affiliated with the applicant) shall declare, pursuant to oath or affirmation administered by the Clerk, or other duly authorized person, that the factual statements or representations that he or she will present shall be truthful and accurate. The form of oath or affirmation shall be substantially similar to: "Do you swear, or affirm, that the factual statements and factual representations which you are about to

give or present before or to this Commission during this public hearing will be truthful and accurate?" Any person who knowingly makes a false statement or representation under oath or affirmation shall be subject to criminal and other sanctions as provided by law, in addition to any consequences provided for under the Commission Procedures or any Town ordinance.

5.5.3.2 Introduction by Attorney and Staff. The Town Attorney will provide a brief overview of the steps in the hearing. The Town staff will then introduce the quasi-judicial matter to the Commission so as to provide an overview of the proposed matter, and identify issues the Commission will be considering.

5.5.3.3 Ex Parte Communications. Commission members may enter into the record factual matters which are not already contained in the record, when such Commission members have personal knowledge pertaining to the physical characteristics of a site, its surroundings, or other communications relevant to the matter being heard.

5.5.3.4 Applicant's Presentation. After staff presentation, the applicant(s) shall be allowed to make a presentation to the Commission. The applicant has the burden of proving that the proposal is consistent with the comprehensive plan and complies with the standards for approval in the Land Development Code.

5.5.3.5 Staffs Presentation. After the applicant's(s') presentation, staff shall present the staffs report and recommendation.

5.5.3.6 Public Comment. After presentation by the applicant(s) and staff, the presiding officer shall open the public comment portion of the quasi-judicial hearing for the purpose of hearing persons who want to be heard on the item under consideration.

5.5.3.7 Closing of Public Comment. The presiding officer shall close the public comment portion of the public hearing upon the conclusion of the comments of the last appropriate speaker or the expiration of the speaking times allowed under these procedures. Thereafter, unless time for public comment is extended or public comment is re-opened in accordance with these procedures, no additional public comments shall be allowed except in specific response to questions by staff or Commissioners.

5.5.3.8 Staff Response and Summary. After public comment is closed, staff shall be allowed an opportunity to respond, to summarize, or further explain staff's position and to advise of changes in staffs position, if any.

5.5.3.9 Applicant's(s') Rebuttal Presentation. After staff response, Applicant's(s') rebuttal shall be allowed in quasi-judicial matters. Rebuttal shall only address comments made in the previous presentations.

5.5.3.10 Factual Errors. Any person(s) who believe that the rebuttal presentation includes an error of fact may be allowed an opportunity to point out such error of fact. This relates to a demonstrable falsehood or misstatement of objective fact. It is not an opportunity to argue the merits of a proposal.

5.5.3.11 Commission and Staff Inquiry. After staff and applicant(s) have made presentations as outlined above and the public comments portion of the hearing is closed, the Commission shall have a final opportunity to comment or ask questions of any applicant(s), staff member or other persons who provided testimony. The presiding officer may allow staff to respond to comments of an applicant(s) or Citizen at this time.

5.5.3.12 Inquiry, Clarification and Comments During the Quasi-Judicial Presentations. It is the intent of the Commission that its quasi-judicial public hearings be orderly and to that end interruption of presentations is ordinarily to be avoided. It is also the intent of the Commission that a complete record of relevant facts be established and a complete understanding of the matters under consideration be obtained. Accordingly, the presiding officer, at any time during a public hearing, may allow Commissioners to comment or make inquiry of persons addressing the Commission, or of staff or other persons in attendance or may allow Town staff or the Town Attorney to comment or make such inquiries. In quasi-judicial hearings, affected parties may ask questions, through the

presiding officer, of the person(s) who make a presentation to the Commission. The presiding officer may allow the affected parties' question(s) to be posed during the presentation or may require the question(s) to await the conclusion of the presentation, in accordance with the above stated intent of the Commission.

5.5.4 **Time Periods for Public Hearing Matters.** The following time limits shall apply to presentations in public hearings:

5.5.4.1 an applicant in a quasi-judicial matter shall be entitled to a total of fifteen (15) minutes without interruption;

5.5.4.2 persons who have been authorized to represent an organization with five (5) or more members or a group of five (5) or more persons shall be entitled to speak ten (10) minutes without interruption;

5.5.4.3 all other persons shall be entitled to speak three (3) minutes each without interruption;

5.5.4.4 an applicant's rebuttal shall be limited to five (5) minutes, unless otherwise set by the presiding officer; and

5.5.4.5 pointing out factual errors shall be limited to one (1) minute, unless otherwise set by the presiding officer.

5.5.5 Other Procedural Guidelines.

5.5.5.1 Registration of Speakers. Persons who desire to make presentations at a public hearing shall, prior to the time at which the item is to be heard, register with the designated staff on the forms provided, and shall provide such information as required to organize the agenda and order of presentation. Five (5) or more persons associated together as Proponents or opponents of an item may be required to select a spokesperson.

5.5.5.2 Limit on Presentations. No person who has made a presentation for or against an item at a given meeting shall be allowed to make additional comments as of right except where due process requires it.

5.5.5.3 Authorization of Group Representatives. Before a person representing an organization or group speaks, that person shall state whom he or she represents and establish how he or she received authorization to speak on behalf of such organization or group of persons, which must include submission of a written authorization. In quasi-judicial hearing matters, anyone representing an organization

must present written evidence of their authority to speak on behalf of the organization in regard to the matter under consideration, unless the presiding officer waives this requirement. The Commission may make further inquiry into the representative authority of such person. Only one ten-minute time allotment per hearing is allowed for each organization or group of persons represented at the hearing.

5.5.5.4 Interruption of Presentations. Notwithstanding any provisions herein, the presiding officer, a Commissioner, the Town Planner as to Land Use items, or the Town Attorney may interrupt and request termination or other appropriate limitation of any presentation or discussion of matters that should not appropriately or legally be considered by the Commission under applicable Florida Statutes, decisions of Florida or federal courts, or Town code provisions in deciding the item then under consideration.

5.5.5.5 Experts. In quasi-judicial proceedings, persons purporting to offer expert testimony shall identify any educational, occupational, and other expertise that they possess that is relevant to their qualifications to speak regarding the matter under consideration. Persons purporting to offer expert testimony in other contexts, such as legislative proceedings, may likewise be required to identify their expertise. Any Commissioner, the Town Planner, or the Town Attorney may inquire further as to such expertise.

5.5.5.6 Additional Time for Presentations. The presiding officer or Commission may allow more than the allotted time for presentations by an Applicant, Proponent, or an Opponent, or other speaker regarding an item, if the additional time is requested. To conserve time and facilitate an orderly meeting, preference shall be given to such requests when they are made in advance of the meeting to the Town Clerk, or in the case of land use items, to the Town Planner. If more than a total of one-half (½) hour is requested by an applicant, proponent, or opponent, the request must be submitted in writing not later than the day before the meeting at which the item is to be heard; provided, however, that even in the absence of a timely request for additional time to make a presentation, the presiding officer, without objection, or the Commission may grant such extension where, in its discretion, it determines it is necessary to do so because of the considerations of law, equity, or fairness.

5.5.5.7 Continued Public Hearings.

5.5.5.7.1 GENERALLY. In any matter where it is known that a scheduled public hearing will be continued to a future date certain, the staff report may be postponed or abbreviated and public comment may be limited to those persons who state that they believe they cannot

be available to speak on the date to which the public hearing is being continued. Such persons shall be allowed to make their comments at the then current meeting if there is a quorum; provided, however, that upon making their comments, such persons shall waive the right to repeat or make substantially the same presentation at any subsequent meeting on the same subject. This waiver shall not preclude such persons from making different presentations based on new information or from offering response to other persons' presentations, if otherwise allowable, at any subsequent meeting.

5.5.5.7.2 REQUEST FOR A FULL COMMISSION. Not more than one continuance of a public hearing shall be granted on the grounds of a desire to obtain attendance by the entire membership of the Commission. Once a request to continue has been granted on those grounds, further continuances may be granted only for other grounds and where good cause is shown.

5.5.5.8 Termination of Presentations. At any Commission proceeding, the presiding officer, unless overruled by a majority of the Commissioners present, may restrict or terminate presentations which in the presiding officer's judgment are irrelevant, frivolous, unduly repetitive, out of order, or in violation of these Commission Procedures.

5.5.5.9 Written Comments. Applicant(s) Proponent(s), and Opponent(s) of any matter under consideration by the Commission shall be entitled to submit timely written comments for consideration by the Commission. Relevant and admissible written comments submitted shall be considered and entered into the record of the meeting as provided elsewhere in the Commission Procedures. Written comments received by Commissioners regarding a matter that is the subject of a quasi-judicial public hearing shall be distributed to all Commissioners, the Town Planner and the Town Attorney and shall be made available for review by the applicant and the public in a project reading file maintained by the Town Planner (land use matters) and by the Town Clerk (for all other matters).

5.5.5.10 Officials and Dignitaries. Notwithstanding other provisions hereof, the presiding officer may allow any elected or appointed public official, or representative thereof, or other dignitary to appear and make presentations at any time with regard to matters under consideration.

5.5.6 Voting, Motions, and Reconsideration.

5.5.6.1 Voting. Unless otherwise provided by law, when the Commission has finished discussion and is ready to vote on a question, the presiding officer shall call for the vote. Upon request, the Clerk shall read back or restate a motion before a vote is taken. Each Commissioner shall vote "yes" or "no" or abstain from voting (but only when legally required by Florida Statutes § 112.3143 or § 286.012). Immediately prior to, or after the vote, the presiding officer may allow any Commissioner to give a brief statement to explain his or her vote, which shall not be used to further argue in favor of or against the motion. A Commissioner shall have the privilege of filing with the Clerk a written explanation of his or her vote which shall become part of the record of the proceeding, but this privilege shall not be available in quasi-judicial matters. The vote upon any question shall be by voice vote unless any Commissioner requests that a roll call vote or show of hands be taken. However, when necessary for the purpose of accurately ascertaining the outcome of a vote or for compliance with legal requirements, the Clerk may require a roll call vote, paper vote, or show of hands.

5.5.6.2 Form of Motions. A motion may be made to either "approve" a question, proposition, or application, or to "deny" a question, proposition, or application.

5.5.6.3 Preparation or Modification of Motions. Prior to a vote on any matter, a Commissioner may request that staff prepare or modify the motion during a recess called for that purpose. Alternatively, if advisable in the Commission's discretion, staff may be instructed to prepare wording to be brought back to the Commission later for motion and vote at that meeting or a subsequent meeting of the Commission. The Town Attorney, the Town Administrator, or Town Planner may request that a motion and vote be delayed to allow preparation or revision of a motion, as provided hereunder.

5.5.6.4 Tie Votes. When the vote of the Commission is equally divided, the status quo ante shall be maintained. In such an event, a person who sought a change in status quo shall be considered to have had the request denied and shall have available the same remedies or rights of review that one would have had if the request had been denied by a majority vote of the Commission, unless, at the same meeting, the Commission votes to approve it with conditions or stipulations attached, or to table, defer, or continue the matter in an attempt to obtain action by a majority vote.

5.5.6.5 Routine Reconsideration. When a question has been decided by the Commission, a Commissioner voting on the prevailing side may move for reconsideration of the question at the same meeting or the next regular meeting of the Commission. If the question was decided by a tie vote, any Commissioner may move for reconsideration of the question at the same meeting or at the next regular meeting of the Commission or at the next meeting of the Commission where a full Commission is present. In no event shall the motion to reconsider be made later than (30) days after a vote on a quasi-judicial matter.

5.5.6.6 Reconsideration Due to Vote Based on Mistake. Upon a finding by a majority of the Commission at any time that there is reason to believe that a vote of the Commission within the previous one year was based upon material mistake of fact or erroneous information, the matter may be brought up for reconsideration. Upon a finding by a majority of the Commission at any time that the material mistake of fact or erroneous information was intentionally caused or allowed by the person or entity in whose favor the previous vote was cast, the vote may be rescinded and all rights, duties, or liabilities thereunder modified or rendered null and void ab initio. Prior to rescinding such a vote, the Commission shall, where necessary to insure due process of law, grant notice and opportunity to be heard to all persons who would be affected by such action.

5.5.6.7 Corrections of Clerical Errors. Any Commissioner may move at any time for correction of clerical or typographical errors inadvertently included in any matter previously passed by the Commission.

5.5.6.8 Effect of Approvals and Denials of Motions. When a matter is brought forward to a vote based on a motion to approve it or approve it with modifications, and such motion fails, the status quo ante shall be maintained and the matter shall be considered to have been denied. A denial shall not preclude a subsequent motion to approve with different modifications at the same meeting. When a matter is brought to a vote based upon a motion to deny it, and said motion fails, the matter shall not be considered granted and shall be treated as if no action has been taken on the matter. Such a vote shall not preclude a subsequent motion at the same meeting to approve or approve with modifications.

5.5.6.9 Reconsideration of Item(s) on Consent Agenda. Where the Commission votes to reconsider one or more items that were previously approved on the consent agenda, the Commission may specify which item(s) shall be reconsidered and reconsider

same without affecting the previous approval of the remaining items on the consent agenda or presentations upon request agenda.

5.5.6.10 Reconsideration to Resolve a Legal Dispute. The Commission may reconsider a prior decision, regardless of the time elapsed, when advised to do so by the Town Attorney for the purpose of resolving a legal dispute arising from the decision.

5.6 **ADJOURNMENT.** At the conclusion of business, the presiding officer shall call for a motion to adjourn the meeting. Alternatively, the presiding officer may inquire whether there is any further business to come before the Commission and if no one speaks, may adjourn the meeting without motion or vote.

6. CERTAIN FUNCTION OF TOWN OFFICIALS

Generally. The Commission shall have oversight of the work of the Town Administrator and Town Attorney. The Town Administrator shall have oversight of the work of Town employees.

Town Planner. Those persons assigned by contract to provide the Town with professional planning services shall have primary responsibility for assisting the Town in the development, updating, and administration of the Town's comprehensive plan, planning code, zoning code, concurrency management code, and floodplain management code.

If the Town Planner determines, in her or his professional judgment, that developments in the law or in planning and zoning best practices, requires the creation or amendment of the Town's comprehensive plan or Town Code, the Town Planner shall first advise the Commission in writing of the matter and obtain authorization to proceed before beginning work on any such project.

Unless otherwise authorized by the Administrator, the Town Planner shall have no involvement in the administration of the Town's building code, including review of construction permits.

Town Attorney. The Town Attorney will undertake any work assignment directed by the Administrator or the Commission consistent with applicable law, Town Code, and the contract between the Town and the law firm. No attorney in the Town Attorney's office will be required to render legal services where to do so would violate applicable ethical standards or create a conflict of interest.

The role of the Town Attorney includes routine handling of legal issues that are the subject of requests for legal services from the Commission or Town Administrator pertaining to Town business. Where requests for legal services come from someone other than the Administrator or a majority of the Commission (e.g., an individual Commissioner, the Town Clerk, the Town Planner, the Building Official, or the Code Enforcement Deputy), the Town Attorney will use the following guidelines in responding:

A. Town Commissioners are charter officers and are entitled to legal advice regarding issues related to the performance of their duties as Commissioners. Therefore, unless precluded by other considerations, a Town Commissioner is entitled to a complete response

to a request for legal services regarding such issues without further Commission action.

B. The Town Attorney will follow normal legal/ethical principles in determining the priority to be given to work assignments, such as the approach of deadlines, the significance of the matter at issue, the consequences of delay in responding, etc. Other things being equal, requests from the Commission, Administrator, or Town Clerk acting at the behest or direction of the Commission or Administrator, shall have priority over other requests.

C. The Town Attorney's office will not undertake legal work on a project that entails an inordinate commitment of time or other resources in the absence of direction from the Commission or Administrator.

D. The Town Attorney's office will not undertake to draft an ordinance, resolution, or other formal expression of Town policy if, based on prior Commission discussion of the same or similar issues, there is reason to believe Commission majority does not support it. In such cases, the individual Commissioner seeking the drafting assistance may ask her or his Commission colleagues to approve of the drafting work which, if approved, will then be performed by the Town Attorney.

E. The Town Attorney does not review the propriety or legality of proposed future actions or inactions of a Commissioner in the absence of a request to do so from the involved Commissioner. Such review would only be confined to the Commissioner's actions as a Commissioner (for instance, taking a vote on an ordinance).

F. When legal service has been undertaken on a matter, whether or not pursuant to Commission request, and it appears that completion of the service may demand considerably more resources than anticipated at the outset of service, the Town Attorney shall request Commission direction on whether to continue the service.

G. The Town Attorney's office will not review past decisions of prior iterations of the Commission for legality in the absence of a request from a majority of the current Commission, unless there is reason to believe that the past decision could result in serious future loss or damage to the Commission or the Town, and that legal review could lead to corrective action that would prevent or mitigate the loss or damage.

H. The Town Attorney ordinarily will not undertake legal service regarding matters outside the scope of the Commission's powers and duties, (e.g., review of actions of federal, state, county or constitutional officers), unless said action appears to pose a serious impact or concern affecting the Town's interests, or unless directed to do so by a majority of the Commission and the work can be done within the Rules Regulating The Florida Bar.

I. The Town Attorney does not represent and does not furnish legal advice to Commissioners or other Town employees or contractors regarding their personal business or legal problems encountered outside the scope of their duties as Town officials or employees. Thus, the Town Attorney will not, absent contrary direction of the Commission, represent an individual Commissioner before the Florida Commission on Ethics. The Town Attorney may, however, defend the Town and individual Town officials or employees against public records or Sunshine Law claims where the Town Attorney and Town Commission believe the

relevant Town officials acted lawfully. In the event the Town Attorney is unable to represent an individual Town official or employee due to a disunity of interest between the Town and such official or employee, the Town Attorney shall inform the Commission that the official or employee will require separate representation. These decisions will be guided by the provisions of Florida Statutes § 111.07 and § 111.071, and the Rules Regulating The Florida Bar.

J. Matters that ordinarily would not be addressed may be reviewed if it appears that failure to undertake such review and advise the Commission could adversely affect the interests of the Commission or the Town, or that the review deals with issues which the Commission will likely be required to consider in the future.

Town Building Official. The Town's Building Official is primarily responsible for the administration of the Town's Building Code and all applicable state laws and administrative regulations associated with construction occurring in the Town. To the extent that any given construction permit application requires a zoning site plan review in addition to plans review, the Building Official shall coordinate with the Town Planner to obtain that review. The Building Official is the Town's sole legal authority regarding the application of the Town's Building Codes, and is the Town's sole flood plane manager. No Town official is authorized to provide any order or instruction to the Building Official as to how she or he interprets or administers the Building Code, including the permitting and inspection functions provided for therein.

Coordination Among Professionals. The Board of Commissioners expects and requires its contracted and employed professional staff to work together professionally and efficiently to ensure the best interests of the Town and its citizens and businesses are addressed. To that end, such professionals shall consult with each other at any time when the work of one has an impact on the work of another. By example, if the Town Attorney is working on the Town Code's chapter on building codes, he or she shall consult with the Building Official to ensure her or his views and input are obtained and incorporated.

Ordinances and Resolutions. The Commission wishes to obtain consistency in quality and format of the ordinances and resolutions it considers. Therefore, the substantive business or policy content of any ordinance or resolution shall be provided to the Town Attorney, who will develop a draft resolution or ordinance for placement on the Commission's workshop or meeting agenda.

Code Enforcement. The Town's Code Enforcement Deputies, who are contracted through the Pinellas County Sheriff's Office, are not under the supervisory control of the Town or its officials. Rather, the Town Clerk, assisted as needed by the Town Attorney, will ensure that the appropriate officials with the PCSO have access to the Town Code, including all new ordinances not yet codified online with MuniCode. Code Enforcement Deputies have the authorization to receive complaints of alleged code violations, to investigate alleged or suspected code violations, and to take all such enforcement actions as are provided for in Town Code and Florida law. No Town official, including elected officials, are authorized to order or direct a Code Enforcement Deputy to take, or not take, any particular action. Complaints of alleged violations received by Town officials, including potential violations observed by such officials themselves, shall be directed to the Town's Code Enforcement Deputies. While the Town Attorney is authorized to interface with the Sheriff's General Counsel as to how a given provision of Town Code is interpreted, and will work with the Code Enforcement Deputies in the development of individual case files in advance of Magistrate hearings, the Town

Attorney does not provide legal advice to the Town's Code Enforcement Deputies.

Record Requests of Contracted Service Providers. From time to time, those companies or entities the Town contracts with to provide Town Planner services or Town Building Official services may directly receive public records requests or subpoenas for records of Town business. In such cases, the Town Planner or Building Official shall immediately provide a copy of such requests to the Town Clerk who, assisted as needed by the Town Attorney, will facilitate the response to the request to ensure all requirements of the Public Records Act are being followed.

7. CONFLICTS; USE OF OTHER RULES.

7.1 CONFLICT WITH LAWS. In any instance where a procedure established by this procedures manual violates or is in conflict with federal or state law, Town Code, or a final order of a court or administrative agency binding on the Town, the procedures established hereunder shall be inoperative to the extent of such conflict. If any portion of this procedures manual is finally held by a court of competent jurisdiction to be invalid, such portion shall be deemed severable from the remainder and, to the extent possible, the remainder shall be operative without the invalid portion.

7.2 ROBERT'S RULES OF ORDER. In all cases not covered by these Commission Procedures, the most current edition of Robert's Rules of Order shall be used as a general guide and may be followed by the presiding officer, unless the Commission overrules the presiding officer.

8. PUBLICATION.

Upon adoption of these Commission Procedures and any amendments to same, the Town Clerk shall cause same to be published on the Commission page of the Town's website, shall note on all future agendas that these Procedures may be reviewed on the Town website, and that persons attending Commission meetings will be expected to conduct themselves in accordance with the Procedures. Copies shall be provided by the Town Clerk via email as a PDF to all persons who request them. A copy shall be available for review by the public in Town Hall and at all meetings of the Commission.

Town Administrator

From: Conn Cole <Conn.Cole@em.myflorida.com>
Sent: Wednesday, February 22, 2023 3:29 PM
To: Town Administrator
Subject: Substantial Improvement/Damage 50% Threshold
Attachments: FDEM-OFM Substantial Damage (50% Rule) FAQ_12.06.22.pdf; FDEM-OFM_Market Value Adjustment Factor_notes 11-8-22.docx

Importance: High

Jeff,

This email serves as a brief follow-up and summary of our conversation today about the Substantial Improvement/Damage 50% threshold. I have also included two attachments that provide additional information.

- "FEMA's 50% Rule" is not a rule but a regulatory threshold of the structure's market value in the definitions of Substantial Improvement (SI) and Substantial Damage (SD). These definitions are in 44 CFR (NFIP Regulations), the Florida Building Code, and your floodplain management ordinance.
- NFIP-participating communities must regulate SI/SD. It is not optional.
- Communities cannot allow "phasing" or breaking the overall project into smaller projects (permitting each smaller project individually) to stay under the 50% threshold.
- Communities that do not regulate SI/SD or allow phasing risk sanctions by FEMA, such as being retrograded out of CRS (policyholders lose premium discounts), placed on NFIP probation, or suspended from the NFIP.
- If a community is placed on probation or suspended from the NFIP, they are not eligible for any federal mitigation grant or disaster funding.
- Communities must follow their floodplain management ordinance and the Florida Building Code when making SI/SD determinations. If a property owner disagrees with the communities determination, they can obtain a private appraisal to determine the market value of their structure.

I hope this helps provide a quick overview of the SI/SD requirements and possible repercussions. Let me know if we need to schedule a meeting with the Town's elected officials and community to discuss this in more detail.

Conn H. Cole, MBA/PA, CFM
State NFIP Coordinator | State Floodplain Manager
Office of Floodplain Management
Bureau of Mitigation
Florida Division of Emergency Management
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WORKSHOP MEETING 02-22-23

SIGN-IN SHEET

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