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www.tucsonrealtors.org

June 4th, 2009

Suzanne Shields
Pima County Regional Flood Control District
97 E. Congress Street, 3rd Floor
Tucson, AZ 85701

Ms. Shields:

The Tucson Association of REALTORS® Public Affairs Committee was very pleased to receive your staff, on April 8th, in regard to the proposed changes to the Floodplain and Erosion Hazard Management Ordinance (Chapter 16 of the Pima County Code). Upon review and consideration of the proposed changes we have the following comments and questions.

In general, many of the new restrictions are greater than that which is required by FEMA. As such, we submit that flexibility and creativity should be greatly encouraged in these areas. Developer's can amortize the cost(s) associated with these kinds of restrictions and regulations over many units, while the impact of these costs and restrictions are greatly magnified when applied to an individual property owner.

16.08.150 - "Cumulative Substantial Improvement." There is well established appraisal application of the term "Functional Obsolescence" which anticipates that aspects of an existing "residence" will become "worth - less" (either because they no longer work, or because the tastes of the buying public have so changed that these "aspects" have little or no value; and in some cases, a negative value). Bathrooms and kitchens are the primary foci of this concept in residential real estate. The change that you have proposed will, over time, cause every property which is now grandfathered (pre-FIRM) to lose it's "grandfathered rights." We strongly oppose this provision and believe this has the effect of codifying an illegal taking of property rights.

16.08.350 - "Floodway Area" – Will there be a mechanism to allow for property owners who will be effected by the new restrictions to discuss "creative" solutions (e.g., the language is general enough to appear to allow a "conversation" between the District and property owners, but that is not explicit)?

16.36.030 - "Grading, Storm Water, and Drainage Improvement" – The "as-built plans" requirement adds considerable costs to an individual property owner building a home. Is there a mechanism for this requirement to be waived in these cases?

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16.38 - Maintenance of Private Drainage Improvements. Is it the intent of the District to impose these restrictions “off-site” (e.g., improvements that may be made to private easements which lead to the property on which the structure is being built)?

16.56.050: 1/2 – “Technical Evidence” – Requiring a “seal” adds considerable costs to an individual property owner building a home. Is there a mechanism for this requirement to be waived, or the standard(s) reduced in these cases? (applicable to 16.20.070 and 16.64.070 (2) as well).

16.64.020 B.1.a: - Abatement of Violations - While there may be functional merit in the District’s desire to have “reasonable access” to a property in these regards, we do not believe that any such right, on the part of the District, exists. ARS 48-3613. Authorization required for development in watercourses; exceptions; enforcement Subsection D. is very clear:

In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this article. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation, including reasonable costs and attorney fees.

If the District (or an individual) believes that they may be damaged there is provision to bring an action to “enjoin, abate or otherwise prevent” the “unauthorized diversion, retardation or obstruction of a watercourse.” Once an action is filed the courts will grant access to the property in question as a matter of discovery. To assert an “administrative” right of access onto private property is a violation of the rights contained in both the US and Arizona Constitutions. We also challenge the presumption, on the part of the District, that it has jurisdiction to pursue, or obtain, an “administrative search warrant” as is provided for under 16.64.020 B.1.b.

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16.64.030 C - Structures deemed nuisances - remedies

As an industry we are supportive of “informed consent” and full disclosure of latent defects. As such, we are supportive of the provision allowing the District to record notifications of violations against offending properties. We are also supportive of the quick and efficient release of any such recordation. The Tucson Association of REALTORS® asks that you include a reasonable time provision to accomplish the recordation of the release (e.g., “no more than 30 day’s from compliance”).

Thank you for your consideration. We look forward to your response and to our continued participation in this process.

Sincerely,

Bill Arnold
Chairman
Public Affairs Committee
Tucson Association of REALTORS®

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**PIMA COUNTY
REGIONAL FLOOD CONTROL DISTRICT
97 EAST CONGRESS STREET, THIRD FLOOR
TUCSON, ARIZONA 85701-1797**

**SUZANNE SHIELDS, P.E.
DIRECTOR**

**(520) 243-1800
FAX (520) 243-1821**

June 25, 2009

Bill Arnold, Chairman, Public Affairs Committee
Tucson Association of REALTORS
2445 N. Tucson Blvd.
Tucson, Arizona 85716

Subject: Floodplain and Erosion Hazard Management Ordinance – Proposed Revisions

Dear Mr. Arnold:

The Regional Flood Control District (District) has received your comments dated June 4, 2009 on the proposed revisions to the Floodplain and Erosion Hazard Management Ordinance (Ordinance). We appreciate the time and effort you and your members have spent reviewing the revisions, and hope that the constructive dialogue will improve the clarity and thoughtfulness of the proposed revisions. Below is the District's response to your questions and concerns:

1) 16.08.150 "Cumulative Substantial Improvement"- Refer to letter for details of comment.

Response: The District has not encountered the situation where a residence has multiple permits for kitchen and/or bathroom remodels likely due to the fact that these improvements seldom obtain permits prior to their construction. This provision is not intended to apply to that scenario, and it has been modified to exempt multiple remodels of the same facility.

2) 16.08.350 "Floodway Area" – Will there be a mechanism to allow for property owners who will be affected by the new restrictions to discuss "creative" solutions (e.g., the language is general enough to appear to allow a "conversation" between the District and property owners, but that is not explicit?)

Response: The existing language in the Ordinance allows for discussion of options. In addition, as with all other permitting decisions, the Floodplain Administrator's decision can be appealed to the Chief Engineer and the Chief Engineer's written finding can be appealed to the Floodplain Board. This provision is found in Section 16.24.050 of the Ordinance. No change to the Ordinance.

3) 16.36.030 "Grading, Storm Water and Drainage Improvement" – The "as-built plans" requirement adds considerable costs to an individual property owner building a home. Is there a mechanism for this requirement to be waived in these cases?

Response: This chapter applies only to subdivision and development plan permitting, and the “as-built” requirement would only apply to infrastructure authorized pursuant to these actions. The District may require “as-built” plans for individual residences in cases where engineered structures (e.g., erosion protection, or channel stabilization) were required prior to issuance of the Floodplain Use Permit. In these cases, it is important to ensure that the infrastructure was built as designed and approved. This is typically accomplished through the “as-built” inspection process. No change to Ordinance

- 4) **16.38 “Maintenance of Private Drainage Improvements” – Is it the intent of the District to impose these restrictions “off-site (e.g. improvements that may be made to private easements which lead to the property on which a structure is being built)?**

Response: The intent of this language is to ensure that there is adequate enforcement authority to compel a homeowners association (HOA) responsible for drainage maintenance to perform maintenance if needed. The construction of detention basins and constructed channels occur in order create subdivision parcels that are free from flood hazards. Once constructed, these improvements often become the responsibility of an HOA. It is important to make sure that these basins and channels are maintained so they continue to function as intended and adjacent properties remain free from flood risk. No change to Ordinance

- 5) **16.56.050: 1/2 “Technical Evidence – Requiring a “seal” adds considerable costs to an individual property owner building a home. Is there a mechanism for this requirement to be waived, or the standard(s) reduced in these cases? (applicable to 16.20.070 and 16.64.070(2) as well).**

Response: There are ample opportunities for discussion during the permitting process which would avoid the need for Technical Evidence to come in under a seal (or for an appeal for that matter). The District prefers the use of thoughtful site planning and consideration of floodplain and riparian functions during the design stage. However, in some cases, when flood hazards are severe or when compromise cannot occur, the remaining option is to appeal. In these cases, the District’s reasoning will be technical in nature, whether it’s a flood hazard assessment or a biological assessment, and the appropriate response in these situations should be technical as well. We do realize that some appeals may be due to hardship or other factors. The proposed language will be modified to allow for appeals with out an engineering seal.

- 6) **16.64.020.B.1.a “Abatement of Violations” – Refer to letter for details of comment.**

Response: This section will be modified to clarify that administrative searches are inspections of businesses that need to be closely regulated such as sand and gravel operations. The District is allowed “reasonable access” to inspect pursuant to A.R.S. §48-3609.K. Further, the Chief Engineer is authorized to apply for and obtain an administrative search warrant for entry and inspection pursuant to A.R.S. §48-3603.C.25. Again, the administrative search warrant is for regulation of businesses where there is substantial government interest supported by the regulatory scheme. Such warrants would be obtained through the courts.

Bill Arnold, Chairman, Public Affairs Committee – Tucson Association of REALTORS
Floodplain and Erosion Hazard Management Ordinance – Proposed Revisions

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- 7) **16.64.030.C – Structures deemed nuisances – remedies – As an industry we are supportive of “informed consent” and full disclosure of latent defects. As such, we are supportive of the provision allowing the District to record notifications of violations against offending properties. We are also supportive of the quick and efficient release of any such recordation. The Tucson Association of REALTORS asks that you include a reasonable time provision to accomplish the recordation of the release (e.g., “no more than 30 days from compliance”).**

Response: The District appreciates the positive response to the violation recordation proposal and agrees that full disclosure of floodplain issues, including existing violations, is important to property transaction. The District also agrees that an expeditious resolution and closure of an enforcement case, including release from recorded violation, is an important element of an effective compliance enforcement program. The Ordinance has been modified to address your request.

If you have any questions regarding the District’s responses to your comments or you have new comments, or if you would like to discuss any issues further, please do not hesitate to call me at 240-1800.

Sincerely,



Suzanne Shields, P.E.
Director and Chief Engineer

SS/tj

c: Chris Cawein, Deputy Director
Eric Shepp, Division Manager – Floodplain Management Division