

14-07

RESOLUTION # 14 -2007

EFFECTIVE DATE: 1-2-07

**A RESOLUTION AMENDING CHAPTER 13, SEDGWICK COUNTY CODE, RELATING TO FLOODPLAIN MANAGEMENT FOR SEDGWICK COUNTY, KANSAS**

WHEREAS, the National Flood Insurance Act of 1968 as amended requires local communities to adopt control measures that regulate land use in areas of special flood hazard within their communities: and

WHEREAS: The Board of County Commissioners on October 13, 2004, enacted Sedgwick County Resolution #183-2004, and the enactment of this resolution will rescind Resolution #183-2004 and all previous floodplain resolutions; and

WHEREAS. the Board of County Commissioners finds it necessary to amend Chapter 13 of the Sedgwick County Code in order to comply with regulations of the Federal Emergency Management Agency and to adopt new Flood Insurance Rate Maps and Flood Insurance Study; and

WHEREAS. the Federal Emergency Management Agency has identified the areas of special flood hazard in Sedgwick County. Kansas; and

WHEREAS. the legislature of the State of Kansas has in K.S.A. 19-212 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare to its citizenry; and

WHEREAS, this resolution is adopted pursuant to the authority of K.S.A. 12-766.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, THAT CHAPTER 13 OF THE SEDGWICK COUNTY CODE ENTITLED "FLOODPLAIN MANAGEMENT," BE AND IS HEREBY AMENDED.**

**SECTION 1: AMENDMENTS TO CHAPTER 13.** Chapter 13 of the Sedgwick County Code is hereby amended in its entirety, and shall read as follows:

**ARTICLE I. IN GENERAL**

**Sec. 13-1. Definitions.**

Unless otherwise expressly stated or unless the context clearly indicates a different intention, the following terms shall, for the purposes of this chapter, have the meanings indicated in this section:

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**Sedgwick Co. Clerk**

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- (1) Administrator is the Director of the Sedgwick County Department of Code Enforcement or the Director's appointee.
- (2) Agricultural commodities means agricultural products and livestock.
- (3) Agricultural structure means any structure used exclusively in connection with the production, harvesting, storage, drying, or raising of agricultural commodities.
- (4) Appeal means a request for review of the administrator's interpretation of any provision of this chapter or a request for a variance.
- (5) Areas of Shallow Flooding means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (6) Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.
- (7) Base flood elevation (BFE) means the elevation for which there is a one-percent (1%) chance in any given year that flood levels will equal or exceed it. The BFE is determined by statistical analysis for each local area and designated on the Flood Insurance Rate Maps (FIRM). It is also known as the 100-year flood elevation.
- (8) Basement means any area of the structure having its floor subgrade (below ground level) on all sides.
- (9) Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, or storage of equipment or materials.
- (10) Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the community.
- (11) Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or pouring of concrete pads).
- (12) Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (a) The overflow of inland waters.

- (b) The unusual and rapid accumulation or runoff of surface waters from any source.
- (13) Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Flood Insurance Study has delineated the Flood Hazard Boundaries and zones establishing insurance rates applicable to the community.
- (14) Flood Insurance Study (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.
- (15) Floodplain or flood prone area means any land area susceptible to being inundated by water from any source (see “flooding”).
- (16) Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.
- (17) Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.
- (18) Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.
- (19) Floodway means the channel of a river 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 one foot at any point. (See “regulatory floodway.”)
- (20) Floodway encroachment lines means the lines marking the limits of floodways on the Flood Insurance Rate Map.
- (21) Floodway fringe means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.
- (22) Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, clogged bridge openings, and the hydrological effect of urbanization of the watershed.
- (23) Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

- (24) 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 listings 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 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.
- (25) Lowest floor means the lowest floor of the lowest enclosed area (including basement) An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built as to render the structure in violation of the applicable floodproofing design requirements of this chapter.
- (26) Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.
- (27) Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale
- (28) Market value or fair market value means an estimate of what is fair, economic, just and equitable value under normal local market conditions.
- (29) Mean sea level means, for purposes of National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on the community's Flood Insurance Rate Map are referenced.
- (30) New construction means, for the purpose of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of June 3,

1986 of the initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

- (31) Person includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.
- (32) Principally above ground means that at least 51 percent (51%) of the actual cash value of a structure, less land value, is above ground.
- (33) Recreational vehicle means a vehicle that is:
  - (a) Built on a single chassis;
  - (b) 400 square feet or less when measured at the largest horizontal projections;
  - (c) Designed to be self-propelled or permanently towable by a light duty truck; and
  - (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
- (34) Regulatory floodway means the channel of a river 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 one foot at any point. (See "floodway.")
- (35) Start of construction includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement occurs within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, of any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
- (36) Structure means a walled and roofed building that is principally above ground, as well as a manufactured home, and a gas or liquid storage tank that is principally above ground.

- (37) Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred
- (38) 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 which 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"
- (39) Variance is a grant of relief to a person from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.
- (40) Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this chapter is presumed to be in violation until such time as that documentation is provided.
- (41) Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

### **Sec. 13-2. Findings of fact.**

(a) The special flood hazard areas of Sedgwick County, Kansas are subject to periodic inundation that results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazards to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damage

(c) The Flood Insurance Study (FIS) that is the basis of this chapter uses a standard engineering method of analyzing flood hazards which consists of a series of interrelated steps:

- (1) Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area

inundated, and the depth of inundation. The base flood selected for this chapter is representative of large floods, which are characteristic of what can be expected to occur on the particular streams subject to this chapter. It is in the general order of a flood that could be expected to have a one percent (1%) chance of occurrence in any one year as delineated on the Federal Insurance Administrator's Flood Insurance Study (FIS), and illustrative materials dated February 2, 2007, as amended, and any future revisions thereto.

- (2) Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the stream channel and overbank areas to convey the regulatory flood.
- (3) Computation of a floodway required to convey flood without increasing flood heights more than one (1) foot at any point.
- (4) Delineation of floodway encroachment lines within which no development is permitted that would cause any increase in the base flood height.
- (5) Delineation of floodway fringe.

**Sec. 13-3. Purpose of chapter.**

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

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize future flood blight areas;
- (7) Ensure that potential home buyers are notified that property is in a flood area; and
- (8) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

**Sec. 13-4. Applicability of chapter.**

The provisions of this chapter shall apply to all areas of special flood hazard within the unincorporated areas of Sedgwick County, Kansas. Areas of special flood hazard are identified by the Federal Emergency Management Agency through a scientific and engineering report entitled "The Flood Insurance Study, Sedgwick County, Kansas, Unincorporated Areas," dated February 2, 2007, with accompanying Flood Insurance Rate Maps, with any revisions thereto, which are hereby adopted and incorporated by reference. Such study results are on file at the office of the County Clerk, the Department of Code Enforcement of Sedgwick County, Kansas and the Division of Water Resources for the State of Kansas.

**Sec. 13-5. Compliance with chapter; correction of violations.**

(a) **Generally.** No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance herewith, and with other applicable regulations. Notice of violations shall be served upon the owner of record; provided that such notice shall be deemed to be properly served upon such owner if a copy thereof is delivered to him personally or if not found, by leaving a copy thereof at his usual place of abode with a person of suitable age and discretion who shall be informed of the contents thereof, or by sending a copy thereof by mail to his last known address, or if the envelope with the copy is returned showing it has not been delivered to him, by posting a copy thereof in a conspicuous place in or about the structure(s) affected by the notice.

(b) **Service of Notice.** Whenever the director of code enforcement determines that there has been or is a violation, or that there are reasonable grounds to believe that there has been or is a violation of any provision of this chapter, the Director shall give notice of such violation or alleged violation to the person or persons responsible therefor. Such notice shall:

- (1) Be in writing;
- (2) Include a description of the real estate sufficient for identification;
- (3) Specify the violation that exists and the remedial action required;
- (4) Allow a reasonable time for the performance of any act it requires.

(c) **Prosecution of violations.** In case any notice of violation(s) and order(s) to correct is not promptly complied with, the director may request the county counselor to institute, in the district court, an appropriate action or proceeding at law or in equity against the owner(s) of record and/or any person(s) with any legal interest of record in or responsibility for the structure(s) or development(s) in violation, ordering that such person(s):

- (1) Be restrained and/or ordered to correct or remove the violation, or refrain from any further execution of work;
- (2) Be restrained and/or ordered to correct the erection, installation, or alteration of such building;



- (3) Remove the structure(s) or development(s) in violation and restore the land to its former condition as directed by Federal Emergency Management Agency;
- (4) Be prevented from occupying or using the structure(s) or development(s) or any part thereof erected, constructed, installed or altered in violation of, or not in compliance with the provisions hereof, or in violation of a plan or specification under which an approval, permit or certificate was issued, and/or
- (5) Comply with the provisions of this chapter.
- (6) Additionally, or in the alternative, the director may proceed with the penalties section hereof.

**Sec. 13-6. Violations and penalty.**

- (a) This chapter is enforceable under chapter 8. Violations of this chapter are classified as provided in Section 8-5 of the Sedgwick County Code
- (b) Violations of this chapter are punishable as provided in Section 1-8.
- (c) Except as otherwise stated, any violation of this chapter shall be a *class H* violation

**Sec. 13-7. Interpretation of chapter.**

The provisions of this chapter are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where the provisions of this chapter conflict or overlap with such easements, covenants, or deed restrictions, whichever imposes the more stringent restrictions shall prevail. In the interpretation and application of the provisions of this chapter, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit or repeal any other powers granted under state statute.

**Sec. 13-8. Warning and disclaimer of liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted in such areas will be free from flooding or flood damages. The provisions of this chapter shall not create liability on the part of the county, or any officer or employee thereof, for any flood damages that result from reliance on the provisions of this chapter or any administrative decision lawfully made thereunder.

**Secs. 13-9 to 13-35. Reserved.**

## ARTICLE II. ADMINISTRATION AND ENFORCEMENT

### Sec. 13-36. Designation and duties of administrator and the director of code enforcement.

(a) The director of the department of code Enforcement or the director's appointee is hereby appointed to administer and implement the provisions of this chapter. The duties of the administrator shall include, but not be limited to:

- (1) Review and file all development permits to assure that sites are reasonably safe from flooding and that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;
- (2) When base flood elevation data has not been provided in accordance with Section 13-4, then the administrator shall obtain, review, and reasonably utilize any flood elevation data available from a Federal, State or other source, in order to administer the provisions of Section 13-66;
- (3) Record and maintain certified record of the mean sea level actual elevation of the lowest floor of all new or substantially improved structures;
- (4) Record and maintain certified record of the mean sea level actual elevation to which the new or substantially improved structures have been floodproofed;
- (5) When floodproofing is utilized for a particular structure the administrator shall file certification from a registered professional engineer or architect;
- (6) Assure that maintenance responsibility is provided for within the altered or relocated portion of any watercourse so that the flood carrying capacity is not diminished;
- (7) Notify, in riverine situations, adjacent communities and the State of Kansas prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency;
- (8) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 13-38;
- (9) Approve all development permits to assure that sites are reasonably safe from flooding.

(b) The director of the department of code enforcement or the director's appointee is hereby appointed to provide enforcement of these provisions. The duties of the director shall include, but not be limited to:

- (1) Obtain certified record of the mean sea level actual elevation of the lowest floor of all new or substantially improved structures,
- (2) Obtain certified record of the mean sea level actual elevation to which the new or substantially improved structures have been floodproofed;
- (3) When floodproofing is utilized for a particular structure the Director of Code Enforcement shall obtain certification from a registered professional engineer or architect;
- (4) The Director of Code Enforcement shall comment on all variances in writing to the person contesting the location of the flood boundary within 30 days and shall be given a reasonable opportunity to appeal the interpretation as provided in Section 13-38.
- (5) Comply with the provisions of Section 13-42.
- (6) Hear and decide appeals and requests for variances from these requirements.
- (7) Serve as a code enforcement officer of the county in enforcing the provisions of this chapter.

**Sec. 13-37. Permit required.**

A Floodplain Development Permit shall be obtained before construction or development begins within any area of hazard as established in Section 13-4. No person, firm, corporation or unit of government shall initiate any development or substantial improvement or cause the same to be done without first obtaining a separate permit for each development as defined in Section 13-1. The fee assessed for Development Permits in Section 13-43 shall be paid at the time the application for the permit is filed. Applications for a Development Permit shall be made on forms furnished by the administrator and may include, but is not limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level, of the lowest floor of all structures.
- (2) Elevation in relation to mean sea level to which any non-residential structure is to be floodproofed;
- (3) Certification from a registered professional engineer or architect that the non-residential floodproofed structure will meet the flood proofing criteria in Section 13-68; and;
- (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

**Sec. 13-38. Variance and appeals procedures.**

(a) The administrator shall hear and decide appeals and requests for variances from the requirements of this chapter. Applications for variances shall be in writing and on a form provided by the department of code enforcement;

(b) The Subdivision Committee of the Metropolitan Area Planning Commission shall hear appeals from any decision or determination made by the director in the enforcement or administration of this chapter. Such appeals shall be in writing and shall specify the grounds for appeal. Such appeals shall be filed with the Secretary of the Metropolitan Area Planning Commission within thirty (30) days of the decision or determination appealed from. A non-refundable processing fee of \$100.00 shall be paid to the Metropolitan Area Planning Department at the time of the filing of an appeal with the Secretary of the Metropolitan Area Planning Commission. An additional processing fee will not be required for appeals to either the Metropolitan Area Planning Commission or the Board of County Commissioners. The Secretary of the Metropolitan Area Planning Commission shall fix a reasonable time for the appeals, giving notice to the appealing party or parties at least fifteen (15) days prior to such hearing. Appeals shall be decided within a reasonable time. At appeal hearings, any party may appear in person, by agent or by attorney. The Subdivision Committee may reserve or affirm, in whole or in part, or modify the decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances;

(c) Any person aggrieved by the decision or determination of the Subdivision Committee may appeal such decision or determination to the Metropolitan Area Planning Commission. The procedure for such appeals shall be as set forth above in subsection (b) for appeals from decisions by the administrator; and,

(d) Any person aggrieved by the decision or determination of the Metropolitan Area Planning Commission may appeal such decision or determination to the Board of County Commissioners. The Board of County Commissioners will review such decision or determination in the manner provided above for appeals from decisions by the administrator; except that such appeals shall be filed with the County Clerk and the notice to the appealing party or parties shall be provided at least five (5) days prior to such hearings.

### **Sec. 13-39. Variance guidelines.**

(a) The conditions under which a variance may be granted by the administrator are as follows:

- (1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (2-5) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic places or the State Inventory of Historic Places, without regard to the procedures as set forth in the remainder of this section.

- (3) Variances shall not be issued within any designated floodway if any increase in the base flood elevation during the flood discharge would result anywhere on the subject flooding source.
  - (4) Variances shall only be issued upon a determination that the variance is the minimum necessary to afford relief, considering the flood hazard, and upon a finding of the following:
    - a. A showing of good and sufficient cause;
    - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (5) A determination that the granting of a variance will not result in an increase in flood height, 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.
  - (6) Any applicant to whom a variance is granted shall be given a written notice that the cost of flood insurance will be commensurate with the increased risk resulting from any reduction in the lowest floor elevation.
- (b) The administrator shall have responsibility for receiving, considering, and passing upon applications for variances. In passing upon applications for variances, the administrator shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The availability of alternative locations not subject to flooding or erosion damage, for the proposed use;
  - (6) The compatibility of the proposed use with existing and anticipated development;
  - (7) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (8) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;

- (9) The cost of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges;
- (10) All agricultural structures considered for a variance from the floodplain management regulations of this chapter shall demonstrate that the varied structure is located in wide, expansive floodplain areas and no other alternate location outside of the special flood hazard area exists for the agricultural structure. Residential structures, such as farm houses, cannot be considered as agricultural structures,
- (11) For any new or substantially damaged agricultural structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with Section 13-66(2);
- (12) The agricultural structures must be adequately anchored to prevent flotation, collapse, or lateral movement of the structures in accordance with Section 12(A) of this chapter. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces;
- (13) Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or floodproofed so that they are contained within a watertight, floodproofed enclosure that is capable of resisting damage during flood conditions,
- (14) The agricultural structures must meet all National Flood Insurance Program (NFIP) opening requirements. The NFIP requires that enclosure or foundation walls, subject to the 100-year flood, contain openings that will permit the automatic entry and exit of floodwaters in accordance with Section 13-68(3);
- (15) The agricultural structures must comply with the floodplain management floodway encroachment provisions of Section 13-69(1). No variance may be issued for agricultural within any designated floodway, if any increase in flood levels would result during the 100-year flood;
- (16) Major equipment, machinery, or other contents must be protected from any flood damage;
- (17) No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the agricultural structures;
- (18) A community shall notify the applicant in writing over the signature of a community official that
  - a. The issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100 00 of insurance coverage, and,

- b. Such construction shall below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this chapter; and
- (19) Wet-floodproofed construction techniques must be reviewed and approved by the community and a registered professional engineer or architect prior to the issuance of any floodplain development permit for construction.

**Sec. 13-40. Nonconforming use.**

(a) A structure or the use of a structure or premises which was lawful before the passage or amendment of this chapter, but which is not in conformity with the provisions of this chapter may be continued subject to the following conditions:

- (1) If such use is discontinued for 24 consecutive months, any future use of the building premises shall conform to this section; and,
- (2) Uses or adjuncts thereof which are or become nuisances shall not be entitled to continue as non-conforming uses.

(b) If any non-conforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than 50 percent of the market value of the structure before the damage occurred except that if it is re-constructed in conformity with the provisions of this Chapter This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, or safety codes or regulations or the cost of any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**Sec. 13-41. Amendment of chapter.**

The regulations, restrictions and boundaries set forth in this chapter may from time to time be amended, supplemented, changed, or repealed to reflect changes in the National Flood Disaster Protection Act of 1973, provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least twenty (20) days notice of the time and place of such hearing shall be published in the official county newspaper of Sedgwick County, Kansas. A copy of such amendments will be provided to the Federal Emergency Management Agency. Changes in the Flood Insurance Rate Map (FIRM) may be made without the necessity of the public hearing and public notice set forth above. The regulations of this chapter are in compliance with the National Flood Insurance Program Regulations as published in Title 44 of the Code of Federal Regulation.

**Sec. 13-42. Recording of elevation certificate information.**

(a) For every Floodplain Development Permit issued hereunder, the administrator shall cause a certificate in the form of an affidavit to be filed and recorded with the Register of Deeds of Sedgwick County, Kansas. Such affidavit shall contain the following information:

- (1) The legal description of the subject land,

- (2) Elevation in relation to mean sea level of the lowest floor of all structures;
- (3) Elevation in relation to mean sea level to which any non-residential structure is to be floodproofed; and,
- (4) The name or names of the record owners of the subject land.

(b) An affidavit meeting the requirements of subsection (a) must be filed prior to any framing inspection being performed. The cost of the recording of such affidavit shall be at the expense of the applicant for the Development Permit. A recorded copy of such affidavit shall be submitted to the administrator.

#### **Sec. 13-43. Fees.**

(a) Amount. Fees shall be assessed in accordance with the provisions of this section as set forth below. All fees provided for herein are for regulatory purposes, and shall be payable to the Sedgwick County Treasurer and deposited in and credited to the County general fund:

- (1) *Floodplain Determination.* The administrator, or his or her duly appointed designee, shall be and is hereby authorized, upon request of any person, partnership, association, corporation, Municipal Corporation, political subdivision, or other entity, to certify whether a tract or parcel of real estate is included in or excluded from a Flood Hazard Area in Sedgwick County, Kansas. Requests for any such written floodplain determination by the administrator shall be in writing and shall be assessed a regulatory fee of \$50.00, which must be paid prior to or contemporaneously with the issuance of such certification. Written determinations from the administrator will include a statement as where the County believes the structure or property to be, either in or out of the mapped floodplain on the current FIRM, and shall include a copy of the FIRM with the structure or property located and identified thereon.
- (2) *Review applications for letter of map revisions based on fill (LOMR-F).* Requests for the administrator to review applications for LOMR-F, and if approved to forward the application to FEMA for review and approval, shall be assessed a fee of \$100.00, which must be paid in at the time the LOMR-F application is submitted. The administrator shall check and verify all technical data that is submitted is accurate, and that all necessary data is submitted in order to process the application.
- (3) *Floodplain Development Permits.* Applications for a Development Permit required by Section 13-37 will be reviewed by the administrator, and assessed a fee of \$50.00, which must be paid in advance at the time the application is submitted.

(b) Payment of fees. Cash or check may used for the payment of permits and other fees required by this code. In any case where a check issued for payment of permits or other fees required by this code is returned marked "insufficient funds" or "account closed" or otherwise dishonored, the remitter of the check shall be liable for a \$30.00 return check service charge, in addition to the permit or other fee. The amount of the returned check, together with the service charge shall constitute a debt due the county, which may be collected by suit or otherwise. Nothing in this subsection shall be construed so as to exclude criminal prosecutions as in other cases involving dishonored checks. A



return check shall void and nullify any approval granted by the administrator until such time new permit application are reviewed and approved by the administrator Payment of those fees shall be either certified check or by cash.

**Secs. 13-44 to 13-65. Reserved.**

### **ARTICLE III. PROVISIONS FOR FLOOD HAZARD REDUCTION**

#### **Sec. 13-66. General standards.**

In all areas of special flood hazards (zones A, AE, AO and AH) the following provisions are required

- (1) All new construction including manufactured homes and substantial improvements shall 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,
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage,
- (3) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage,
- (4) All new construction and substantial improvements shall 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,
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system,
- (6) No portion of a private wastewater disposal system shall be constructed within the 100-year floodplain of any stream, river or watercourse unless written approval is obtained from the Director of the Department of Code Enforcement This does not preclude repair of existing systems,
- (7) On site waste disposal systems shall be located to avoid impairment to them or contamination from them flooding,
- (8) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited,
- (9) If otherwise permitted by zoning resolutions of Sedgwick County, storage of other material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after flood warning, and,

- (10) That until a floodway has been designated, no development, including landfill, may be permitted within any Zone AE on the County's FIRM unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and reasonably anticipated uses, will not increase the water surface elevation of the 100-year flood more than one (1) foot on the average cross section of the reach in which the development or land-fill is located as shown on the Flood Insurance Study, Sedgwick County, Kansas, Unincorporated Area, which is incorporated by reference in Section 13-4
- (11) Structures used solely for agricultural purposes in connection with the production, harvesting, storage, drying, or raising of agricultural commodities, including the raising of livestock, may be constructed at-grade and wet-floodproofed provided there is no human habitation or occupancy of the structure, the structure is of single-wall design, there is no permanent retail, wholesale, or manufacturing use included in the structure, a variance has been granted from floodplain management requirements of this chapter, and a floodplain development permit has been issued
- (12) Structures used solely for parking and limited storage purposes, not attached to any other structure on the site, of limited investment value, and not larger than 400 square feet, may, be constructed at- grade and wet-floodproofed provided there is no human habitation or occupancy of the structure, the structure is of single-wall design, a variance has been granted from the standard floodplain management requirements of this chapter, and a floodplain development permit has been issued

**Sec. 13-67. Standards for proposed subdivisions and new developments.**

In proposed subdivisions, new developments located in any areas of special flood hazard (zones A, AE, AO and AH), the following provisions shall be required

- (1) All proposed subdivisions and other proposed new developments, including manufactured home parks or subdivisions, shall be consistent with the need to minimize flood damage,
- (2) All proposed subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage,
- (3) All proposed subdivisions shall have adequate drainage provided to reduce exposure to flood hazards, and,
- (4) Base flood elevation data shall be provided for proposed subdivisions and other proposed development (including proposed parks for manufactured homes and subdivisions), which is greater than either 50 lots or 5 acres

**Sec. 13-68. Specific standards.**

(a) In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 13-4 or Section 13-36, (Zones AE, AH and AO) the following provisions are required:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor elevated to at least two (2) feet of freeboard above the base flood elevation;
- (2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated at least two (2) feet of freeboard above the level of the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below such a 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. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 13-36.
- (3) Requirement for all new construction and substantial improvements. That fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or 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 (1) 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; and,
- (4) *Manufactured homes.*
  - a. All manufactured homes to be placed within all unnumbered A zones, AE, and AH zones, on the community's FIRM shall be anchored to resist flotation, collapse, or lateral movement. Manufactured homes must be anchored in accordance with State and local building codes and FEMA guidelines. In the event that over-the-top frame ties to ground anchors are used, the following specific requirements (or their equivalent) shall be met:
    1. Over-the-top ties shall be provided at each of the four (4) corners of the manufactured home, with two additional ties per side at intermediate locations and manufactured homes less than fifty (50) feet long requiring one additional tie per side;
    2. Frame ties shall be provided at each corner of the home with five additional ties per side at intermediate points and manufactured homes less than 50 feet long requiring four (4) additional ties per side;

- 3 All components of the anchoring system be capable of carrying a force of four thousand eight hundred (4,800) pounds, and
  - 4 Any additions to the manufactured home shall be similarly anchored
- b. All manufactured homes to be placed within zones A, AE, and AH on the community's FIRM on sites
- 1 Outside of a manufactured home park or subdivision,
  - 2 In a new expansion to an existing manufactured home park or subdivision,
  - 3 In an expansion to an existing manufactured home park or subdivision, or
  - 4 In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home will be at least two (2) feet of freeboard above the base flood elevations; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (4)a
- c. All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A, AE, AO and AH on the community's FIRM that are not subject to the provisions of subsection (4)b shall be elevated so that either
- 1 The lowest floor of the manufactured home will be at least two (2) feet of freeboard above the base flood elevation, or
  - 2 The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than thirty-six (36) inches in height above the grade, and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection (4)a
- (5) Recreational vehicles It is required that recreational vehicles placed on sites within the identified floodplain on the community's FIRM either
- a Be on the site for fewer than one hundred eighty (180) consecutive days,
  - b Be fully licensed and ready for highway use, or
  - c Meet the permit requirements and the elevation and anchoring requirements for manufactured homes contained herein A recreational vehicle is ready for

highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(b) In all areas of the special flood hazards where base flood data has not been determined and no high water records are available, other methods to determine the base flood elevation are to be used, such as Managing Floodplain Development in Approximate Zone A Areas, FEMA Publication 265/July 1995, as set forth in Section 13-4 and/or Section 13-36 (Zones A), and the following provisions are required:

- (1) *Residential Construction.* New construction or substantial improvements of any residential structure located where there is no detailed study information shall have the lowest floor, including the basement, elevated to at least three (3) feet of freeboard above the estimated base flood elevation together with the attendant utilities and sewer facilities.
- (2) *Nonresidential Construction.* New construction or substantial improvement of any commercial, industrial or other non-residential structure where there is no detailed study information shall either have the lowest floor, including basement, elevated to at least three (3) feet of freeboard above the level of the estimated base flood elevation together with the attendant utilities and sewer facilities, or be floodproofed so that below such a level the structure is water tight with walls substantially impermeable to the passage of water and with structure components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the administrator as set forth in Section 13-36.

(c) A survey is required on all platted lots or unplatted tracts of land that have a FEMA mapped Zones A, AE, AH or AO floodplain prior to a building permit being issued. The owner/applicant must obtain the services of a licensed land surveyor to complete the following:

- (1) Locate and set stakes identifying the limits of the mapped Zones A, AE, AH or AO.
- (2) Locate and stake the four (4) corners of the proposed structure site.
- (3) Set a reference elevation point (benchmark) for the construction of the proposed structure. The elevation datum is to be NAVD88.
- (4) The owner/applicant must submit a certified drawing by the surveyor to Code Enforcement showing the location of the mapped floodplain, proposed structure site, ground elevations, location of reference elevation point (benchmark) and the proposed elevation of the lowest opening to the structure to be approved before a building permit is issued.

#### **Sec. 13-69. Regulatory floodways.**

Located within areas of special flood hazard established in Section 13-4 are areas designated as regulatory floodways. Since the regulatory floodway may be an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

- (1) Encroachments are prohibited, including fill, new construction, substantial improvements and other developments unless certification by a professional registered engineer or architect is provided demonstrating the encroachments shall not result in any increase in the base flood elevation anywhere on the subject flooding source during occurrence of the base flood discharge;
- (2) If subsection (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 13-66, 13-67, and 13-68; and,
- (3) In zone A unnumbered, obtain review and reasonably utilize any floodway data available through federal, state or other sources or Section 13-67 in meeting the standards of this section.

#### **Sec. 13-70. Areas of Shallow Flooding.**

Located within the areas of special flood hazard established in Section 13-4, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depth of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- (1) Within AO Zones;
  - a. All new construction and substantial improvements of residential structures shall have the lowest floor elevated above the highest adjacent grade at least two (2) feet above the depth number specified in feet on the County's FIRM (at least two feet if no depth number is specified);
  - b. All new construction and substantial improvements of non-residential structures shall:
    1. Have the lowest floor elevated above the highest adjacent grade at least as high as two (2) feet above the depth number specified in feet on the County's FIRM (at least two feet if no depth is specified), or
    2. Together with attendant utility and sanitary facilities, be completely floodproofed to or above the level specified in subsection (1)b.1 of this section, so that any space below that level 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.

- c. The anchoring requirements for manufactured homes as established in Section 13-68 shall be required.
- (2) Within AH Zones;
- a. The specific standards for all areas of special flood hazard where base flood elevation data has been provided shall be required as set forth in Section 13-68, and,
  - b. Adequate drainage paths around structures on slopes shall be required in order to guide floodwaters around and away from proposed structures.

**SECTION 2: SEVERABILITY CLAUSE.**

Should any section, clause or provision of this resolution be declared by any court of competent jurisdiction to be invalid, the same shall not affect the validity of this resolution as a whole, or any part thereof, other than the part so declared to be invalid, and to that end the provisions of this resolution are declared to be severable.

**SECTION 3: RESCISSION OF PRIOR RESOLUTION.**

Resolution Number 183-2004 titled "A Resolution Amending Chapter 13 Sedgwick County Code, Relating Floodplain Management for Sedgwick County, Kansas" dated October 13, 2004, is hereby rescinded by this resolution.

**SECTION 4: SAVING CLAUSE.**

All rights and remedies of Sedgwick County, and the property owners and residents thereof, are expressly saved as to any and all violations of the Sedgwick County Code, Chapter 13, Resolution Nos. 227-1988, 138-1995 and 183-2004, or any prior floodplain management resolution that have accrued at the time of the effective date of this resolution. The county shall have all the powers that existed prior to the effective date of this resolution as to all such accrued violations

**SECTION 5: EFFECTIVE DATE.**

This resolution shall take effect upon its adoption by the Board of County Commissioners of Sedgwick County, Kansas, which occurred on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**[APPROVALS ON FOLLOWING PAGES]**

Commissioners present and voting were:

DAVID M. UNRUH	<u>absent</u>
TIM R. NORTON	<u>aye</u>
THOMAS G. WINTERS	<u>aye</u>
LUCY BURTNETT	<u>aye</u>
BEN SCIORTINO	<u>aye</u>

Dated this 3rd day of January, 2006.

BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS

[Signature]  
BEN SCIORTINO, Chairman  
Commissioner, Fifth District

[Signature]  
LUCY BURTNETT, Chair Pro Tem  
Commissioner, Fourth District

Absent  
DAVID M. UNRUH  
Commissioner, First District

[Signature]  
TIM NORTON  
Commissioner, Second District

[Signature]  
THOMAS G. WINTERS  
Commissioner, Third District



ATTEST:  
[Signature]  
DON BRACE, County Clerk

APPROVED AS TO FORM:  
[Signature]  
AARON T. BLASE 12/14/06  
Assistant County Counselor

RECOMMENDED BY:  
[Signature]  
GLEN WILTSE, Director  
Dept. of Code Enforcement

WATER RESOURCES  
RECEIVED

NOV 28 2006



APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

KANSAS STATE BOARD OF AGRICULTURE

BY: DAVID L. POPE, Chief Engineer-Director  
DIVISION OF WATER RESOURCES

APPROVED

This 11<sup>th</sup> day of Dec., 2006

*[Signature]*  
for **David L. Pope, P.E.**  
Chief Engineer

Division of Water Resources  
Kansas Department of Agriculture

WATER RESOURCES  
RECEIVED

NOV 28 2006