



U.S. Department of Homeland Security
536 S. Clark St. 6th Floor
Chicago, IL 60605

FEMA

September 18, 2020

The Honorable Tim Kabat
Mayor, City of La Crosse
City Hall
400 La Crosse Street
La Crosse, WI 54601

RE: La Crosse NFIP Community Compliance Status

Dear Mayor Kabat:

This letter is intended to provide you the City of La Crosse's current compliance status in the National Flood Insurance Program (NFIP). Over the last year the FEMA Region V has reviewed the additional information provided by your staff in response to our March 26, 2019 letter addressed to you. The review of the information provided by the city is now complete. Based on our review, the city is no longer considered to be fully compliant with the minimum development and participation standards of the NFIP. As you are aware, only communities which are fully compliant with minimum NFIP standards are eligible for continued participation in the Community Rating System (CRS). Therefore, the Region will be working with our headquarters to retrograde the city to a class 10 in the CRS program effective April 2021. Once retrograded, policy holders within the city will no longer be eligible for discounts on their flood insurance policies. For the city to be considered fully compliant with the NFIP, it must take action to correct the below administrative issues and remediate the structures in violation of minimum NFIP development standards.

Administrative Deficiencies Requiring Action

Variances

Variances granted should be for a parcel with physical characteristics so unusual that complying with the ordinance would create an exceptional hardship. Those characteristics must 1) be unique to that property and not shared by adjacent parcels; 2) pertain to the land, not to any structure, its inhabitants or the property owners.

Based on the variance case information provided, it appears that none of the lots were different or unusual from other lots within the city. By granting variances to lots with similar or nearly identical conditions to others, the city has potentially set a precedent for future variance cases.

Variances and a determination of an exceptional hardship should not be based on costs to comply with the requirements, a desire to have a certain size or configuration of building, nor the personal circumstances of an individual or business. Likewise, self-induced or after the fact variances should not be considered exceptional hardships.

In several cases, the variances appear to have been granted based primarily on the economic circumstances or as a convenience for the property/business owner. Additionally, other variances were granted for completed projects that had been previously reviewed and permitted by the city for development in the floodplain.

While La Crosse has taken positive steps to reverse the variance granted at 712 Cliffwood Lane, the city needs to review its variance process and provide proposed adjustments, which will be implemented to assure that variances to the floodplain development standards are consistent with 44CFR§60.6. In addition, since several of the variance case files involved prior development reviewed and permitted by the city, La Crosse will need to review its permit process and propose changes to assure that a permit will not be issued if the proposed development does not meet floodplain management standards. The Region is also requesting the city provide additional information related to certain variances and the development on specific locations identified in the attachment to this letter.

Letters of Map Revision Based on Fill (LOMR-F)

NFIP participating communities are responsible to review all permit applications to determine whether building sites are reasonably safe from flooding per 44CFR§60.3(a)(3). This requirement is further defined for the LOMR-F process in 44CFR§65.2(c), which defines reasonably safe from flooding to mean that the base flood waters will not inundate the land or damage the structures to be removed from the SFHA, and that any subsurface waters related to the base flood will not damage existing or proposed buildings. FEMA provides additional guidance to local officials on the review and analysis related to reasonably safe from flooding in Technical Bulletin 10-01 (attached).

When a community signs the LOMR-F application Community Acknowledgement Form, one of the conditions they are agreeing to is to provide all analysis and documentation related to their finding that the land and any existing or proposed structures are reasonably safe from flooding as defined in 44CFR§65.2(c). While permit information on the various requested LOMR-F locations throughout the city were provided, there is no clear analysis and/or documentation that directly supports the type of analysis described in Technical Bulletin 10-01 or that the subsurface effects of the base flood were considered. At a minimum, it would be expected that some type of geo-technical or soil compaction analysis would have been completed prior to the city concluding the project were reasonably safe.

The city needs to review its process and propose changes that will be implemented to assure that it is meeting its obligations under 44CFR§60.3(a)(3) when reviewing LOMR-F requests. Specifically, the City of La Crosse will need to propose what procedures it plans to put in place to assure that prior to signing any future community acknowledgement form in a LOMR application it has data and an analysis on file consistent with the standards described in Technical Bulletin 10-01. The Region is also requesting the city either provide the data and analysis for specific locations listed in the attachment to this letter or clarify the reason the form was signed if the data and analysis are not available.

Substantial Improvement/Damage Calculations

Whenever a participating community in the NIFP receives a permit for either repairs or improvements to an existing structure in the SFHA, they must evaluate all the work to determine whether the structure is substantially improved or damaged. In several locations, the permit information provided does not appear to include all the improvements made to the structure. In other cases, there is no or minimal information to illustrate how the city complied with the substantial improvement requirements or verified the dollar amounts of the improvements. In several of the locations reviewed, it appears that separate permits are issued for electrical, plumbing, HVAC and maybe other aspects of the project. This may and have been a contributing factor in some of the identified issues.

The city needs to review its process and propose changes that will be implemented to assure that all improvement or repairs made to a structure have been included in the substantial improvement/damage calculation. The proposed process changes should be clear on how the city intends to verify the costs of the improvements or repairs. The Region is also requesting the city provide and/or verify cost information on improvements for specific locations listed in the attachment to this letter.

Development Permit Requirements

Requiring permits for all development within the SFHA is a minimum requirement for NFIP participating communities. Development in the NFIP is defined as all manmade changes to improved or unimproved real estate. There are several locations in which the permit information was either not available or did not include items such as siding, roofing or interior remodeling.

Another minimum requirement of participating communities is that they obtain and maintain as-built low floor elevation information for all new and substantially improved/damaged structures. Several locations where permit information was requested the as-built elevation information was missing.

Minimum NFIP development requires that the lowest floor, including basement or crawlspace, be at or above the base flood elevation (BFE) for all new or substantially improved/damaged structures in the SFHA. The permit information provided confirms that numerous locations were constructed with the lowest floor below the BFE. Many of these locations the city has been aware of since at least 2004, however, they remain in violation of minimum NFIP development requirements.

The City needs to review its process and provide proposed changes that will be implemented to assure that all development as defined in 44CFR§59.1 obtains permits prior to any work taking place. In addition, please provide proposed changes that will ensure all new and substantially improved/damaged structures in the SFHA have their lowest floor elevated at or above the BFE and that the as-built elevation has been obtained and will be maintained.

Locations in Violation of Minimum NFIP Development Standards Requiring Action

There are over 40 individual locations that, based on the information provided or due to lack of information, are considered violations of minimum NFIP development standards and will require action on the part of the City of La Crosse. The specific locations requiring actions to resolve violations are listed in the attachment to this letter. In some cases, the violations might be resolved with verification of data or other documentation. However, in multiple locations the city will need to provide a proposed remediation plan for each location outlining the specific actions and proposed modifications to each structure that will be undertaken to bring the structure into compliance with minimum NFIP and State of Wisconsin development standards to the maximum extent possible. For each location in the attachment to this letter an expected timeline of the remediation process has been provided.

To demonstrate continued progress toward resolving the issue, please provide the Region with the draft proposed changes to the administrative procedures within 90 days of receipt of this letter. In addition, please provide the information for the identified locations in the attachment to this letter on the expected timeline for resolution noted for each location. Failure to adequately address the administrative deficiencies and make progress on resolving the violations may result in the city being placed in a probationary status of the NFIP. The Region stands ready to help clarify any technical questions or provide additional guidance as the city works to address the issues.

If you or your staff have any questions please contact Eric Kuklewski, Chief, Floodplain Management & Insurance Branch at (312) 408-5230 or email at eric.kuklewski@fema.dhs.gov.

Thank you for your attention to this important issue.

Sincerely,

A handwritten signature in black ink that reads "Mary Beth Caruso". The signature is written in a cursive style with a loop at the end of the last name.

Mary Beth Caruso.
Director, Mitigation Division

Attachments:

La Crosse Summary of Outstanding Violations Sept2020
Technical Bulletin 10-01

cc:

Robert R. Davis, Wisconsin DNR