

***Several homes in our town were irreparably damaged by last year's spring flooding because they were located within a flood area. Can a town enact floodplain regulations to prohibit future development like this, even if the town has not adopted zoning?***

Yes. Even if the town does not have a town plan or zoning bylaws, it may enact flood hazard area bylaws, and for good reasons. 24 V.S.A. §4412(c). The flooding of land too often results in loss of life and serious damage to personal and real property. It can also cause major disruptions to town services and commercial businesses and wreak havoc with septic systems, sewer and water lines and propane tanks, resulting in health-threatening conditions for occupants of the flooded lands and the community. Flood damage cleanup is also very costly for everyone.

Enacting flood hazard regulations helps to ensure that future development, if allowed in sensitive areas, is designed and constructed in a manner that minimizes or eliminates the potential for flood damage. Such regulations serve to encourage towns to use and manage agricultural land – quite often in flood plains – wisely and in accordance with state law. They also serve to direct new development away from flood-prone areas. In addition, towns that have such regulations are eligible for federal flood insurance. 24 V.S.A. §§4401(b)(5), 4412(c).

In towns without zoning, the process for adopting flood hazard area bylaws is generally the same as for adopting other bylaws, like subdivision or zoning regulations, with the exception of the planning commission review if your town does not have a planning commission. 24 V.S.A. §4403 et seq. Flood hazard area bylaws are administered in the same manner as zoning bylaws, and a permit is required for any land development covered under the bylaw. 24 V.S.A. §4412(e). According to §4412(c), the flood hazard provisions must apply to "...all flood hazard areas designated under 10 V.S.A. §753," and may apply to other flood hazard areas as determined by the town. The statutes set forth some optional flood protection standards in addition to the mandatory provisions that must be included in any flood hazard area bylaw. 24 V.S.A. §4412(d). If the town does not wish to adopt permanent flood hazard area regulations, the law also sets forth a process for adopting temporary or 'interim' bylaws. 24 V.S.A. §§4410, 4412(g).

If your town is seeking to take steps to address this issue and has legal questions, please give us a call. If you are looking for technical assistance, the Vermont Department of Housing & Community Affairs in August 1998 published a helpful guidebook entitled, "Community Planning for Flood Hazards." Another invaluable resource that offers technical assistance as well as model flood hazard area regulations is the Floodplain Management Division of the Agency of Natural Resources (802/241-3759).

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