

**BELVEDERE FLOODPLAIN ANALYSIS COMMITTEE**

**MEETING AGENDA**

**DECEMBER 1, 2020 6:00 PM**

**REMOTE MEETING**

***COVID-19 ADVISORY NOTICE***

Due to COVID concerns and consistent with State Executive Orders No. 25-20 and No. 29-20, the meeting will not be physically open to the public. Members of the Floodplain Analysis Committee and staff will participate in this meeting remotely. Members of the public are encouraged to participate remotely via Zoom or telephone pursuant to the information and link below. Public comment will be accepted during the meeting. The public may also submit comments in advance of the meeting by emailing the Director of Planning and Building at: [iborba@cityofbelvedere.org](mailto:iborba@cityofbelvedere.org) Please write "Public Comment" in the subject line. Comments submitted one hour prior to the commencement of the meeting will be presented to the Floodplain Analysis Committee and included in the public record for the meeting. Those received after this time will be added to the record and shared with Planning Floodplain Analysis Committee member after the meeting.

**City of Belvedere is inviting you to a scheduled Zoom meeting.**

**Topic: Belvedere Floodplain Analysis Committee Meeting**

**Time: December 1, 2020 06:00 PM**

**Join Zoom Meeting**

<https://us02web.zoom.us/j/87447681522?pwd=c2cxQkNNdnAyM1N4OXN5N2p5M0ViUT09>

**Webinar ID: 874 4768 1522**

**Passcode: 778350**

**888 -788- 0099 (Toll Free)**

**877- 853- 5247 (Toll Free)**

The City encourages that comments be submitted in advance of the meeting. However, for members of the public using the Zoom video conference function, those who wish to comment on an agenda item should write "I wish to make a public comment" in the chat section of the remote meeting platform. At the appropriate time, the Meeting Host will allow oral public comment through the remote meeting platform. Any member of the public who needs special accommodations to access the public meeting should email the **Director of Planning and Building**, [iborba@cityofbelvedere.org](mailto:iborba@cityofbelvedere.org) who will use her best efforts to provide assistance.

**A. CALL MEETING TO ORDER**

**B. PUBLIC COMMENT**

This is an opportunity for any citizen to briefly address the Floodplain Analysis Committee on the scheduled items on this agenda. Upon being recognized by the Chair, please state your name, address, and limit your oral statement to no more than three minutes. Matters that appear to warrant a more-lengthy presentation or consideration may be added to the agenda for further discussion at a later meeting.

**C. SCHEDULED ITEMS**

1. Discussion regarding goals and objectives established in previous Sub-Committee Meetings.
2. Discussion and possible direction to staff regarding issues raised at September 22, 2020 Planning Commission meeting including but not limited to:
  - a) Need of any modifications to the existing Floodplain Management Ordinance and the policy/procedure manual.
  - b) Modifications to the proposed demolition definition amendment in Belvedere Municipal Code section 19.08.136.

- c) Revisions to the proposed “substantial improvement” definition amendment in Belvedere Municipal Code section 16.20.040 (BA).
- d) Possible revisions of the text in the preamble of Title 16 in the Belvedere Municipal Code.

**D. ADJOURN**

**NOTICE: WHERE TO VIEW AGENDA MATERIALS**

Staff reports and other writings are available for public inspection at the following locations:

**Online** at [www.cityofbelvedere.org](http://www.cityofbelvedere.org)

**Belvedere City Hall**, 450 San Rafael Ave, Belvedere (Writings distributed after the posting date of this agenda are available for public inspection at this location only);

**Belvedere-Tiburon Library**, 1501 Tiburon Boulevard, Tiburon.

To request automatic mailing of agenda materials, please contact the City Clerk at (415) 435-3838.

**NOTICE: AMERICANS WITH DISABILITIES ACT**

The following accommodations will be provided, upon request, to persons with a disability; agendas and/or agenda packet materials in alternate formats and special assistance needed to attend or participate in this meeting. Please make your request at the Office of the Planning Department or by calling (415) 435-3838. Whenever possible, please make your request four working days in advance of the meeting.

Items will not necessarily be heard in the above order, not, because of possible changes or extenuating conditions, be hear. For additional information, please contact City Hall, 450 San Rafael Ave, Belvedere CA 94920. (415) 435-3838.

Date Posted: November 24, 2020



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# CITY OF BELVEDERE

## Staff Report

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December 1, 2020

**TO: City of Belvedere Floodplain Analysis Committee**

**FROM: Brian Van Son, Building Official**

**SUBJECT: Proposed Floodplain Analysis Policy and Ordinance Amendments**

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A. Background.

On September 22, 2020, the Planning Commission held a special meeting to consider recommending to the City Council Ordinance Amendments and Administrative Policy Manual Amendments regarding floodplain regulations for residential construction projects within the AE and VE flood zones. This Planning Commission meeting came after a series of Floodplain Analysis Subcommittee meetings, at which time the recommended amendments were developed.

The Planning Commission had several concerns regarding the proposed amendments. The purpose of this meeting is to discuss the Planning Commission's direction and comments.

Specifically, the Planning Commission had concerns regarding: 1) the overall need of the proposed Floodplain Ordinance amendments; 2) the wording of the proposed definition of "demolition"; 3) issues surrounding the application of "substantial improvements" under FEMA regulations; and 4) the wording in the preamble of Title 16 of the Belvedere Municipal Code.

The full staff report and proposed Ordinance and Policy Amendments from the Planning Commission's September 22, 2020 meeting may be found at:

<https://www.cityofbelvedere.org/AgendaCenter/ViewFile/Item/371?fileID=701>

B. Discussion.

First, the Planning Commission was concerned with the overall need for the proposed amendments and the reasoning behind proposing the amendments.

Second, in response to Planning Commission concern, the attachments to this Staff report contain clarifications in the Administrative Policy manual that “demolition” shall be determined at the time of building permit issuance.

Third, a new proposed Administrative Policy Amendment is included for subcommittee consideration that codifies the City’s existing policy and practice of valuing projects together within a 12 month period for purpose of determining substantial improvement. To the extent projects are separated by 12 months, these projects would not count towards the substantial improvement determination.

Lastly, the Planning Commission requested that the sub-committee research amendments to the language in the preamble of Title 16, Floodplain Management Ordinance.

C. Conclusion.

Staff suggests that the subcommittee consider the proposed Administrative Policy Amendments, discuss other possible floodplain regulation concerns, and give direction to staff if desired.



**CITY OF BELVEDERE PLANNING COMMISSION  
STAFF REPORT**

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**REPORT DATE:** August 10, 2020 **AGENDA ITEM:**

**MEETING DATE:** August 18, 2020

**TO:** City of Belvedere Planning Commission

**FROM:** Brian Van Son, Building Official

**REVIEWED BY:** Irene T. Borba, Director of Planning and Building  
Emily Longfellow, City Attorney

**SUBJECT:** **Recommendation to City Council of Ordinance Amendments and Administrative Policy Manual Amendments regarding floodplain regulations for residential construction projects located within the AE and VE flood zones**

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**RECOMMENDATIONS**

Adopt resolutions recommending City Council adoption of Ordinance Amendments and Administrative Policy Amendments regarding application of floodplain regulations.

**MOTION 1** Adopt resolution recommending City Council adoption of Ordinance amendments to Design Review, Chapter 20.04, adding section 20.04.200 regarding analysis of “substantial improvement” for floodplain regulation purposes; and Floodplain Management Section 16.04.040(AB), definition of “substantial improvement.

**MOTION 2** Adopt resolution recommending City Council approval of amendments to the Administrative Policy Manual regarding application of substantial improvement analysis for floodplain regulation purposes.

**Background**

Floodplain regulations in the Belvedere Municipal Code and under FEMA require all projects that constitute a “substantial improvement” in the AE and VE flood zones be raised to one foot above base flood elevation. A “substantial improvement” is when the value of the proposed project equals or exceeds 50% of the fair market value of the structure prior to construction.

An applicant submits an estimate of construction costs and an appraisal of the structure with the Design Review application. If the Floodplain Administrator calculates that the cost of the project equals or exceeds 50% of the structure’s appraised value, then the project is a substantial improvement and must be elevated pursuant to Floodplain rules. However, because this information is submitted early in the planning stage, it is often inaccurate.

For example, while an applicant gives an estimate of project cost at the initial planning stage, a contractor is not selected until the end of the building permit process. Often, once a contractor is secured, the estimated project value is more accurate and increases. If the project estimate at the building permit stage is equal to or exceeds 50% of the structure's value, then it would require elevation per floodplain regulations. The project would then require revision and go through the approval process again with additional time and costs to the property owner and the City. Additionally, questions have been raised regarding the accuracy of a structure's valuation in certain instances.

Currently, there is no mechanism to cross-check the estimated project valuation or appraisal, and staff notes that in many instances, the appraisal and project valuations submitted by an applicant do not meet the 50% substantial improvement threshold.

Questions have been raised regarding the accuracy of appraisals and project cost estimates. If an applicant wishes to avoid raising the structure pursuant to Floodplain requirements, there is an incentive to overvalue the structure and undervalue the estimated cost of construction. For example, if the appraised value of the structure appears high, and/or the cost of construction appears low, the cost of construction will be less likely to meet the 50% threshold required for a substantial improvement, thereby avoiding Floodplain regulations.

To address this concern, and to provide consistency and predictability, a Planning Commission subcommittee was formed to develop tools to use when performing a substantial improvement analysis. These tools will confirm the accuracy of both the appraised value of a structure and the estimated costs of construction – the two factors necessary for analyzing a substantial improvement. The proposed policies and ordinance amendments will also allow a more accurate determination of substantial improvement early in the planning stage, increasing predictability for applicants and the City.

### **Proposed Administrative Policy Amendments**

Below please find a summary of the proposed Administrative Policy Amendments. Please note that no one policy is dispositive. For example, if a project is *not* a substantial improvement under one policy that does not necessarily indicate that it is not a substantial improvement under a separate policy, analysis, or Code section. The policies are intended as tools for evaluation and guidance.

#### A. Demolition in Flood Zones Presumptively Constitute Substantial Improvement Subject to Floodplain Regulations

The proposed Administrative Policy provides that any project located in a designated flood zone that meets the definition of a demolition in BMC section 19.08.136 is presumptively a substantial

improvement subject to Floodplain regulations, unless the individual facts and circumstances of the project indicate otherwise.

A substantial improvement is a project where the cost of a project equals or exceeds 50% of the value of the structure prior to construction. In most cases, the cost of construction to replace a demolition – which is defined as including the removal of more than 50% of exterior wall and roof areas – will necessarily exceed 50% of the structure’s value, thereby qualifying as a substantial improvement. Please note that the Administrative Policy gives the Floodplain Administrator discretion to determine, based on the unique facts of the particular case, that a demolition does not constitute a substantial improvement.

#### B. Preferred Appraisal Method and Independent Third Party Evaluations and Appraisals

The proposed policies provide tools to ensure the accuracy of an appraisal.

First, the policy provides that the applicant’s submitted appraisal must be an “Actual Cash Value” appraisal in most circumstances, unless the Floodplain Administrator determines otherwise based on the unique facts of the case. The Actual Cash Value appraisal method evaluates the cost to replace a structure on the same parcel with a new structure of like-kind and quality, minus depreciation due to age and use. The Actual Cash Value method is accepted by FEMA.

Second, the policy provides that the Floodplain Administrator may require that the applicant pay for an independent third party appraiser, to be retained by the City, to perform an independent appraisal and/or an evaluation of an appraisal submitted by the applicant. This independent third party analysis and/or appraisal will help confirm the accuracy of any appraisal initially submitted by the applicant.

#### C. Standardized Per Square-Foot Multiplier

Currently, the valuation of a construction project is provided by the applicant at the time of building permit application before a contractor is selected. Often when the contractor is selected, the project costs become more accurate and increase.

The proposed policy provides for a standard per square-foot multiplier to allow the Floodplain Administrator to evaluate construction costs based on a standardized measure, and create a transparent system that allows property owners, architects, contractors, and members of the public to better understand how the City of Belvedere evaluates projects within the flood zones.

The policy provides that the Floodplain Administrator analyzes a project based valuations provided by the Craftsman National Building Cost Manual (CNBM). This publication provides a national averages, per square foot, for construction within specific regions of all 50 states, as well as, local area modification factors for construction within a specific region.

For example, the most common type of home built in Belvedere’s Floodplain qualifies as luxury construction. The NBCM provides a cost per square foot of construction as \$388.89 for luxury construction in the Bay Area with a local area multiplier of 27%. For a 2,600 square foot home, staff would initially multiply the square footage of the project by the cost per square foot, \$388.89. This totals \$1,011,114.00. That total would then be adjusted with the local area modifier of 27%. This totals \$1,284,114.78. Therefore, the total cost of construction for this project would be \$1,284,114.78, or \$493.89 per square foot. This amount would be used in the substantial improvement determination, unless the Floodplain Administrator determines that another methodology is appropriate based on the unusual facts of the case.

### **Proposed Ordinance Amendments**

#### **1. Design Review Finding Allowing Planning Commission Consideration of Substantial Improvement**

Notwithstanding the additional tools provided to the Floodplain Administrator in the proposed Administrative Policy amendments, the subcommittee sought to ensure that the Planning Commission would have the discretion to reject a project if it determined that a project did, in fact, constitute a substantial improvement. The subcommittee recommends an additional Design Review finding as follows:

The proposed work shall be evaluated as to whether it meets the definition of “substantial improvement” as defined in Section 16.20.040 of the Municipal Code. If it is found that the proposed work constitutes a “substantial improvement” then it must satisfy all applicable floodplain requirements in the Municipal Code and pursuant to Federal Emergency Management Agency guidelines.

This additional finding would provide the Planning Commission with the discretion to independently evaluate the substantial improvement determination.

#### **2. Substantial Improvement Analysis for Projects Over Time**

FEMA specifically provides that property owners should not circumvent floodplain regulations by “phasing” projects so that no one project individually meets the substantial improvement threshold, but taken together, the project would otherwise qualify and require elevation.

The City’s current policy and practice is to measure the period of construction inactivity between projects. If a new project begins one year after the completion of a previous project, then the projects are evaluated separately. However, the value of projects constructed within one year are evaluated cumulatively. The subcommittee had concerns that this allowed applicants to, in effect, build a larger project over a longer period of time without complying with floodplain regulations.

[FEMA publications](#) define a “phased improvement” as a single larger improvement broken into sections. (FEMA “Administering Substantial Improvement and Substantial Damage Requirements; Desk Reference” Section 5.6.2, p. 5-6.) FEMA guidance further provides, “[l]ocal officials should take care to ensure that phased improvements to not circumvent the substantial improvement requirements.” (*Id.*)

FEMA guidance notes that consecutive applications should be evaluated together to determine if the whole project constitutes a substantial improvement. (*Id.*)

FEMA guidance also contains tools to ensure that substantial improvement thresholds are not circumvented by constructing multiple phases of a single project, where taken individually the project does not meet the 50% threshold, but together exceeds 50%. For example, a local jurisdiction may adopt a lower substantial improvement threshold, i.e., when total project costs equal or exceed 40% (or 30%, etc.) of the value of the structure prior to construction, the project constitutes a substantial improvement. (*Id.*, at 5-18.)

Also, FEMA suggests that jurisdictions may adopt a cumulative substantial improvement definition to ensure that multiple phases of one project are considered together. After discussion, the subcommittee recommends FEMA’s suggested language as follows:

"Substantial improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement or new development of a structure taking place during a 3 year period, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement.

After discussion, the subcommittee recommends an ordinance amendment to the definition of “Substantial Improvement” to conform with FEMA’s suggested language.

## **ENVIRONMENTAL REVIEW**

The proposed Administrative Policies and Ordinance Amendments are exempt from the provisions of the California Environmental Quality (“CEQA”) Guideline section 15061(b)(3) as it can be seen with certainty that there is no possibility that the policies will have a significant adverse effect on the environment

## **CONCLUSION**

Staff suggests that the Planning Commission approve the Administrative Policy Amendments and the Ordinance amendments developed by the subcommittee. The policies and ordinance amendments will provide valuable tools to ensure an accurate substantial improvement determination, providing for the consistent and predictable application of floodplain regulations.

## **RECOMMENDATION**

Adopt resolutions recommending City Council adoption of Ordinance Amendments and Administrative Policy Amendments regarding application of floodplain regulations.

**MOTION 1** Adopt resolution recommending City Council adoption of Ordinance amendments to Design Review, Chapter 20.04, adding section 20.04.200 regarding analysis of “substantial improvement” for floodplain regulation purposes; and Floodplain Management Section 16.04.040(AB), definition of “substantial improvement.

**MOTION 2** Adopt resolution recommending City Council approval of amendments to the Administrative Policy Manual regarding application of substantial improvement analysis for floodplain regulation purposes.

**ATTACHMENTS**

1. Proposed Administrative Policy Amendments
2. Proposed Ordinance Amendments
3. Copy of City of Belvedere Floodplain Ordinance (BMC Chapter 16.20)
4. Copy of Sample CNBM valuation tables

## **Suggested Additional Administrative Policy**

### **14.7.3(4)**

Unless there is a period of at least 12 months of construction inactivity between the finalization of an initial building permit and the issuance of subsequent building permits, the value of such projects will be added together for purposes of making a Substantial Improvement Determination. During this time of construction inactivity, the site and structure must be safe and habitable as determined by the Planning and Building Departments. Each project must receive final inspection approval from the City. The structure/site must appear in finished form, and shall not appear incomplete in any way during the time of inactivity between projects. This may require the installation of site improvements, landscaping, or other features required by the Planning Department.

**Proposed language changes in yellow.**

## **14.7.2 COMMENTS**

### **1. Demolition In Flood Zone Presumptively Substantial Improvement Subject to Floodplain Regulations**

This Administrative Policy provides that any project located in a designated flood zone that meets the definition of a demolition in BMC section 19.08.136 **determined at the time of building permit issuance**, is presumptively a substantial improvement subject to Floodplain regulations, unless the individual facts and circumstances of the project indicate otherwise. BMC section 19.08.136, defines demolition as:

*19.08.136 Demolition. "Demolition," for the purposes of this Title and Title 20, means the razing of a building, removal of a dwelling unit, or the removal of more than fifty percent of the total exterior wall and roof area from the grade up, including all exterior openings. Removing a residential second unit or converting a duplex into a single unit is considered a demolition. The following activities shall not be considered to be demolitions within the meaning of this definition: a retrofit (see Section 19.08.458); maintenance, repair and/or replacement of exterior surfaces, so long as the materials are consistent with the requirements of Section 20.04.140 "Materials and colors used;" and other maintenance efforts deemed by the Building and Planning Departments to be minor in nature and scope. It is the intent of this definition to ensure that all alterations to existing structures that are part of a major project for the remodel, alteration, construction, or repair of a home or accessory structure are reviewed by the City through a Design Review process, pursuant to Title 20 of the Belvedere Municipal Code.*

A substantial improvement is a project where the cost of a project equals or exceeds 50% of the value of the structure prior to construction. In most cases, the cost of construction to replace a demolition – which is defined as including the removal of more than 50% of exterior wall and roof areas – will exceed 50% of the structure’s value, thereby qualifying as a substantial improvement. However, the Administrative Policy provides that the Floodplain Administrator retains discretion to determine, based on the unique facts of the particular case, that a demolition does not constitute a substantial improvement.

## **14.7.3 POLICY/PROCEDURE**

### **1. A Demolition In Flood Zone Presumed Substantial Improvement for Floodplain Regulation Purposes**

If a project located in a designated floodplain constitutes a “demolition” as defined in Belvedere Municipal Code chapter 19.08 **determined at the time of building permit issuance**, then the project presumptively will be considered a substantial improvement pursuant to Belvedere Municipal Code chapter 16.20 and as such, must comply with all applicable Floodplain regulations. In his or her discretion, based on unusual facts or circumstances, the Floodplain

Administrator may determine a demolition is not a substantial improvement and is not required to satisfy Floodplain regulations.