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EXCLUSIVE

How to Navigate New Flood Maps, Regulations

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Only time will tell how flood regulations, insurance and laws governing rebuilding will ultimately affect property owners in the wake of Superstorm Sandy, says Racioppi Jr.

MORRISTOWN, NJ—Among the many challenges New Jersey property owners will face in recovering from the devastation of Superstorm Sandy is navigating new flood maps and regulations that will impact their reconstruction efforts and their insurance premiums going forward.

While the Federal Emergency Management Agency designates flood hazard areas and flood zones, these designations do not incorporate specific building requirements. Those requirements are imposed by the State of New Jersey through the Flood Hazard Area Act, which requires that the lowest floor of any building built or reconstructed in a flood hazard area be at least one foot above the higher of the applicable State or FEMA “base flood elevation.” High risk areas, “Zone V” and “Zone A”, are commonly known as flood hazard areas. (Additional requirements are imposed on construction within Zone V.) A base flood elevation is the expected height above sea-level of a proverbial once-in-a-hundred-year flood in a given area.

For the past two years, FEMA has been working on updated floodplain maps for New Jersey. Though FEMA has not completed its re-mapping, it recently released Advisory Base Flood Elevations (“ABFEs”).

On Jan. 24, 2013, the New Jersey Department of Environmental Protection (“NJDEP”) issued an

emergency rule adopting the ABFEs as the applicable flood level elevations in New Jersey.

Though the **Flood Hazard Area Act** does not mandate raising structures that are otherwise in good repair simply because they are at or below the ABFEs, flood insurance premiums are expected to increase significantly for properties that do not meet those criteria. Commercial buildings located below the ABFEs may see significant insurance changes. Policies that are written will almost certainly have higher deductibles, many private insurers may cease writing policies for buildings constructed below the ABFEs and insurers that continue to write flood insurance policies may quickly run out of capacity, forcing an increase in premiums, all similar to what is seen for those seeking earthquake insurance in earthquake zones. Additionally, policies will likely exclude any loss for damage to the portions of properties located below the ABFEs.

In addition, new construction and reconstruction in New Jersey will be eased, from both a regulatory and a financial perspective, in a number of ways. First, the emergency rule allows certain property owners to proceed with reconstruction or new construction under a “permit-by-rule” from the NJDEP. Eligible owners (restoration costs exceed 50% of the “structure’s” pre-damage market value) and those beginning new construction) who otherwise meet applicable criteria will be able to proceed without securing or paying for the typical NJDEP permit needed to build in a flood hazard area.

Substantial financial assistance may be available to owners who are forced to reconstruct their property or wish to elevate their property above the applicable ABFEs. For those who have flood insurance through the government run National Flood Insurance Program (“NFIP”), FEMA provides up to \$30,000 to cover costs of complying with federal, state and local regulations. Also, the State has announced that it plans to provide grants for owners whose properties were substantially damaged by Hurricane Sandy.

Only time will tell how flood regulations, insurance and laws governing rebuilding will ultimately affect property owners in the wake of Superstorm Sandy. We will continue to monitor developments as they arise.

Nothing contained in this article is intended to be relied upon for legal advice. For any questions on how the topics discussed in this alert affect you, please contact Riker Danzig Scherer Hyland & Perretti LLP’s Nicholas Racioppi Jr. at (973) 451-8492 or via e-mail at nracioppi@riker.com or Joshua M. Greenfield at (973) 451-8532 or via e-mail at jgreenfield@riker.com. The views expressed in this column are the author’s own.

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