

# Article 15. Floodplain Development Overlay District

Section 15-1	Statutory Authorization
Section 15-2	Findings of Fact
Section 15-3	Statement of Purpose
Section 15-4	Lands to which Article Applies
Section 15-5	Enforcement Officer
Section 15-6	Boundaries for Interpretation of District Boundaries
Section 15-7	Compliance
Section 15-8	Abrogation and Greater Restrictions
Section 15-9	Interpretation
Section 15-10	Warning and Disclaimer of Liability
Section 15-11	Appeal to Board of Zoning Appeals
Section 15-12	Definitions
Section 15-13	Permit Required
Section 15-14	Administration
Section 15-15	Application for Permit
Section 15-16	Establishment of Zoning District
Section 15-17	Standards for the Floodway Overlay District and the Floodway Fringe Overlay District
Section 15-18	Requirements
Section 15-19	Storage of Material and Equipment
Section 15-20	New Development
Section 15-21	Floodway Overlay District
Section 15-22	Floodway Fringe Overlay District
Section 15-23	Specific Standards
Section 15-24	Manufactured Homes
Section 15-25	Recreational Vehicles
Section 15-26	Variance Procedures
Section 15-27	Considerations for Variances
Section 15-28	Conditions for Variances
Section 15-29	Non-Conforming Use
Section 15-30	Reconstruction
Section 15-31	Amendments
Section 15-32	Penalties for Violation

## Section 15.01 **STATUTORY AUTHORIZATION.**

The Legislature of the State of Kansas has in **K.S.A. 12-741 et seq.** and specifically in **K.S.A. 12-766** delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare. Therefore, the Governing Body of Harvey County, Kansas, ordains the following regulations.

## Section 15.02 **FINDING OF FACT.**

- A. The special flood hazard areas of Harvey County, Kansas, are subject to inundation which results in loss of life and 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 (1) cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities; and (2) the occupancy of flood hazard areas by uses vulnerable to floods, hazardous to others, inadequately elevated, or otherwise unprotected from flood damages.
- C. The Flood Insurance Study (FIS) that is the basis of this Article uses a standard engineering method of analyzing flood hazards, which consist 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 article is

representative of large floods which are characteristic of what can be expected to occur on the particular streams subject to this article. It is the general order of a flood which could be expected to have a one percent chance of occurrence in any one year as delineated on the Federal Insurance Administrator's FIS, and illustrative materials dated **October 6<sup>th</sup>, 2010**, as amended, and any future revisions thereto;

2. Calculation of water surface profiles are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the regulatory flood;
3. Computation of the floodway required to convey this flood without increasing flood heights more than one foot at any point.
4. Delineation of floodway encroachment lines within which no obstruction is permitted which would cause any increase in flood height.
5. Delineation of the floodway fringe, i.e., that area outside the floodway encroachment lines but which still is subject to inundation by the regulatory flood.

#### Section 15.03 **STATEMENT OF PURPOSE.**

It is the purpose of this article to promote the public health, safety and general welfare and to minimize those losses described in Section 15-1 by provisions designed to:

1. Restrict or prohibit uses, which are dangerous to health, safety or property in times of flood or cause undue increases in flood heights or velocities.
2. Require that uses vulnerable to floods, including public facilities, which serve such uses, be provided with flood protection at the time of initial construction.
3. Protect individuals from buying lands that are unsuited for intended purposes because of flood hazards.
4. Assure that eligibility is maintained for property owners in the community to purchase flood insurance in the National Flood Insurance Program.

#### Section 15.04 **LANDS TO WHICH ARTICLE APPLIES.**

This article shall apply to all lands within the unincorporated jurisdiction of Harvey County, Kansas, **identified on the Flood Insurance Rate Map (FIRM) dated October 6<sup>th</sup>, 2010 as unnumbered A Zones and AE Zones** and within the Zoning Districts FW and FF established in Section 15-16 of this article. In all areas covered by this article, no development shall be permitted except upon a development permit granted by the Governing Body or its duly designated representative under such safeguards and restrictions as the governing body or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the County and where specifically noted in Sections 15-18:30.

Section 15.05 **ENFORCEMENT OFFICER.**

The Zoning Administrator is hereby designated as the Governing Body's duly designated enforcement officers under this article.

Section 15.06 **BOUNDARIES FOR INTERPRETATION OF DISTRICT BOUNDARIES.**

The boundaries of the floodway and floodway fringe overlay districts shall be determined by scaling distances on the official zoning map or on the Flood Insurance Rate Map or Floodway Map. Where interpretation is needed to the exact location of the boundaries of the districts as shown on the official zoning map, as for example where there appears to be a conflict between a mapped boundary and actual field conditions, the enforcement officer shall make the necessary interpretation. In such cases where the interpretation is contested, the Board of Zoning Appeals will resolve the dispute. The regulatory flood elevation for the point in question shall be the governing factor in locating the district boundary on the land. The person contesting the location of the district boundary shall be given a reasonable opportunity to present his/her case to the Board and to submit his/her own technical evidence, if he/she so desires.

Section 15.07 **COMPLIANCE.**

No development located within known flood hazard areas of this community shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.

Section 15.08 **ABROGATION AND GREATER RESTRICTIONS.**

It is not intended by this article to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. All other resolutions inconsistent with this article are hereby repealed to the extent of the inconsistency only.

Section 15.09 **INTERPRETATION.**

In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

Section 15.10 **WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by man-made or natural causes such as ice jams and height bridge openings restricted by debris. This article does not imply that areas outside floodway and floodway fringe district boundaries or land uses permitted within such districts will be free from flooding or flood damages. This article shall not create liability on the part of Harvey County or any officer or employee thereof for any flood damages that may result from reliance on this article or any administrative decision lawfully made thereunder.

Section 15.11 **APPEAL TO BOARD OF ZONING APPEALS.**

Where the enforcement officer denies a request for a permit to develop or a variance, the applicant may apply for such permit or variance directly to the Board of Zoning Appeals in the manner prescribed in Section 2.03 of the Harvey County Unified Development Code.

Section 15.12 **DEFINITIONS.**

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the same meaning they have in common usage and to give this article its most reasonable application.

**100-YEAR FLOOD.** See "Base Flood."

**ACCESSORY STRUCTURE.** Means the same as "Appurtenant Structure."

**ACTUARIAL RATES.** See "Risk Premium Rates."

**ADMINISTRATOR.** Means the Federal Insurance Administrator.

**AGENCY.** Means the Federal Emergency Management Agency (FEMA).

**APPEAL.** Means a request for review of the Floodplain Administrator's interpretation of any provision of this article or a request for a variance.

**APPURTENANT STRUCTURE."** Means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

**AREA OF SPECIAL FLOOD HAZARD.** Is the land in the floodplain within a community subject to a one- percent or greater chance of flooding in any given year.

**BASE FLOOD.** Means the flood having a one percent chance of being equaled or exceeded in any given years.

**BASEMENT.** Means any area of the structure having its floor subgrade (below ground level) on all sides.

**BUILDING.** See "Structure."

**ENFORCEMENT OFFICER.** Means the official of the community who is charged with the authority to implement and administer laws, resolutions, and regulations for that county.

**COMMUNITY.** Means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**DEVELOPMENT.** Means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**ELEVATED BUILDINGS.** Means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

**ELIGIBLE COMMUNITY OR PARTICIPATING COMMUNITY.** Means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

**EXISTING CONSTRUCTION.** Means for the purpose of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing Construction" may also be referred to as "Existing Structures."

**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 the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**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 the pouring of concrete pads.)

**FLOOD OR FLOODING.** Means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of inland and/or (2) the unusual and rapid accumulation or runoff of surface waters from any source.

**FLOOD BOUNDARY AND FLOODWAY MAP (FBFNI).** Means an official map of a community on which the Administrator has delineated both special flood hazard areas and the designated regulatory floodway.

**FLOOD ELEVATION DETERMINATION.** Means a determination by the Administrator of the water surface elevations of the base flood; that is, the flood level that has a one percent or greater chance of occurrence in any given year.

**FLOOD ELEVATION STUDY.** Means an examination, evaluation and determination of flood hazards.

**FLOOD FRINGE.** Means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

**FLOOD HAZARD BOUNDARY MAP (FHBM).** Means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A zones.

**FLOOD INSURANCE RATE MAP (FIRM).** Means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS).** Means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**FLOODPLAIN OR FLOOD-PRONE AREA.** Means any land area susceptible to being inundated by water from any source (see Flooding.)

**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.

**FLOODPLAIN MANAGEMENT REGULATIONS.** Means zoning resolutions, subdivision regulations, building codes, health regulations, special purpose resolutions (such as floodplain and grading resolutions) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

**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.

**FLOODWAY OR 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 elevations more than one foot.

**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 bridge openings and the hydrological effect of urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE.** Means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE.** Means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**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 listing 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 the 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.

**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 so as to render the structure in violation of the applicable floodproofing design requirements of this article.

**MANUFACTURED HOME.** Means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation

when attached to the required utilities. The term "Manufactured Home" does not include a "Recreational Vehicle."

**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.

**MAP.** Means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

**MARKET VALUE OR FAIR MARKET VALUE.** Means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

**MEAN SEA LEVEL.** Means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

**NEW CONSTRUCTION.** Means, for the purposes of determining insurance rates, structures for which the "Start of Construction" commenced on or after the effective date of an 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 the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** Means a manufactured home park or subdivision for which the construction of facilities for servicing the lot 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 the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

**NFIP.** Means the National Flood Insurance Program (NFIP).

**PARTICIPATING COMMUNITY.** Also known as an "Eligible Community," means a community in which the Administrator has authorized the sale of flood insurance.

**PERSON.** Includes any individual or group of individuals, corporation, partnership, association or any other entity, including Federal, State, and local governments and agencies.

**PRINCIPALLY ABOVE GROUND.** Means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

**RECREATIONAL VEHICLE.** Means a vehicle which 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.

**REMEDY A VIOLATION.** Means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

**RISK PREMIUM RATES.** Means those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. "Risk Premium Rates" include provisions for operating costs and principal allowances.

**SPECIAL FLOOD HAZARD AREA.** See "Area of Special Flood Hazard."

**SPECIAL HAZARD AREA.** Means an area having special flood hazards and shown on the FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, A-E, or AH.

**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 improvements were within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, 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, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, 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.

**STATE COORDINATING AGENCY.** Means that agency of the state government, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

**STRUCTURE.** Means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home. "Structure" for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**SUBSTANTIAL DAMAGE.** Means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**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 "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 that 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 include the structure's continued designation as a "historic structure."

**VARIANCE.** Means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

**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 article is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION.** Means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.



Section 15.13 **PERMIT REQUIRED.**

No person, firm or corporation shall initiate any development or cause the same to be done without first obtaining a separate permit for development for such building or structure.

Section 15.14 **ADMINISTRATION.**

The enforcement officer is hereby appointed to administer and implement the provisions of this article. Duties of the enforcement officer shall include, but not be limited to, the following:

1. Review all development permits to assure that sites are reasonably safe from flooding and that the permit requirements of this article have been satisfied.
2. Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required.
3. Notify adjacent communities and the State Board of Agriculture, Division of Water Resources, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
4. Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood carrying capacity is not diminished.
5. Verify, record and maintain record of the actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures.
6. Verify, record and maintain record of the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed.
7. When floodproofing is utilized for a particular structure, the building officer shall be presented certification from a registered professional engineer or architect.

Section 15.15 **APPLICATION FOR PERMIT.**

To obtain a permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit;
2. Describe the land on which the proposed work is to be done by lot, block, tract and house and street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use or occupancy for which the proposed work is intended.
4. Be accompanied by appropriate plans and specifications for proposed construction.

Section 15.16 **ESTABLISHMENT OF ZONING DISTRICT.**

The mapped floodplain areas within the jurisdiction of this article are hereby divided into the two following districts: a floodway overlay district (FW) and floodway fringe overlay district (FF) identified on the FIRM. The boundaries of these districts shall be shown on the official zoning map. Within these districts, all uses not meeting the standards of this article and those standards of the underlying zoning district shall be prohibited. These zones shall be consistent with Zone A16 as identified on the official FIRM and identified in the flood insurance study provided by the Federal Emergency Management Agency.

Section 15.17 **STANDARDS FOR THE FLOODWAY OVERLAY DISTRICT AND THE FLOODWAY FRINGE OVERLAY DISTRICT.**

No permit for development shall be granted for new construction, substantial improvements and other improvement, including the placement of manufactured homes within Zone A16, unless the conditions of Sections 14-16 are satisfied.

Section 15.18 **SAME; REQUIREMENTS.**

New construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:

1. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination.
3. Construction with materials resistant to flood damage, utilizing methods and practices that minimize flood damages, and 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.
4. All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Section 15.19 **SAME; STORAGE OF MATERIAL AND EQUIPMENT.**

- A. The storage or processing of materials, except for a purpose used exclusively for heating, within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
- B. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a flood warning.

Section 15.20 **SAME; NEW DEVELOPMENT.**

Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, shall be required to assure that:

- A. All such proposals are consistent with the need to minimize flood damages;
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located, elevated and constructed to minimize or eliminate flood damage;
- C. Adequate drainage is provided so as to reduce exposure to flood hazards; and
- D. Proposals for development (including proposals for manufactured home parks and subdivisions) of five acres or 50 lots, whichever is less, include within such proposals the regulatory flood elevation.

Section 15.21 **FLOODWAY OVERLAY DISTRICT.**

Only uses having a low flood-damage potential and not obstructing flood flows shall be permitted within the floodway district to the extent that they are not prohibited by any other resolution. All encroachments, including fill, new construction, substantial improvements and other developments must be prohibited unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge. No use shall increase the flood levels of the regulatory flood elevation. These uses are subject to the standards of Sections 15-17:20. The following are recommended uses for the floodway district:

- A. Agricultural uses, such as general farming, pasture, nurseries, forestry, etc.
- B. Residential uses such as lawns, garden, parking and play areas.
- C. Nonresidential areas such as loading areas, parking, airport landing strips.
- D. Public and private recreational uses such as golf courses, archery ranges, picnic grounds, parks, wildlife and nature preserves.

Section 15.22 **FLOODWAY FRINGE OVERLAY DISTRICT.**

Any use permitted in Section 15-21 shall be permitted in the Floodway Fringe Overlay District. No use shall be permitted in the district unless the standards of Sections 15-14:20 are met.

Section 15.23 **SAME; SPECIFIC STANDARDS.**

In all areas identified as numbered and unnumbered A zones where base flood elevation data have been provided, the following provisions are required:

- A. **RESIDENTIAL CONSTRUCTION.** New construction or substantial improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated to one foot above base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or a professional engineer.
- B. **NON-RESIDENTIAL CONSTRUCTION.** New construction or substantial improvement of any commercial or industrial structures shall have the lowest floor, including basement, elevated to one foot above the base flood elevation; or, together with attendant utility and sanitary facilities, be flood proofed so that below one foot above the base flood elevation 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 section are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 15-5. The elevation of the lowest floor shall be certified by a licensed land surveyor or a professional engineer.

- C. **NEW CONSTRUCTION AND SUBSTANTIAL IMPROVEMENTS.** Require, for all new construction and substantial improvements, which fully enclosed areas below the lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and 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:
1. 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; and
  2. The bottom of all openings shall be no higher than one 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.

**DETACHED GARAGES AND OTHER ACCESSORY BUILDINGS.** Detached garages, sheds, or structures which constitute a minimal or small investment and are used only for parking or limited storage may be constructed so that its floor is below the base flood elevation; provided, however, that the accessory structure is designed and constructed to meet the following requirements:

1. Use of the structure must be limited to parking or limited storage and not used for human habitation;
2. The structure must be built using unfinished and flood damage resistant materials;
3. The structure must be adequately anchored to prevent flotation, collapse, or lateral movement which may result in damage to other structures;
4. Any mechanical and utility equipment in the structure must be elevated to or above the base flood elevation or flood proofed;
5. The structure shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
6. The structure shall not exceed 700 square feet; and
7. The structure must comply with this article's floodway provisions and floodplain encroachment provisions contained in 44 CFR, Section 60.3(c)(10) or (d)(3).

Section 15.24 **SAME; MANUFACTURED HOMES.**

- A. All manufactured homes to be placed within all unnumbered and numbered A zones on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- B. Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones on the community's FIRM on sites:
1. Outside of manufactured home parks or subdivisions;
  2. In a new manufactured home park or subdivision;
  3. In an expansion to and existing manufactured home park or subdivision; or
- D. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood; be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to one foot above the base flood elevation and be securely attached to an adequately anchored foundation system to resist

flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or a professional engineer.

- C. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones on the community's FIRM, that are not subject to the provisions of Article 15-24(b) of this article, be elevated so that either:
  - 1. The lowest floor of the manufactured home is at least one foot above the base flood level; or
  - 2. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. . **The elevation of the lowest floor shall be certified by a licensed land surveyor or a professional engineer.**

Section 15.25 **SAME; RECREATIONAL VEHICLES.**

All recreational vehicles placed on sites within all unnumbered and numbered A zones on the community's FIRM shall either:

- A. Be on the site for fewer than 180 consecutive days, and be fully licensed and ready for highway use; or
- B. Meet the permitting, elevating, and the anchoring requirements for manufactured homes of this article.
  - 1. 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.

Section 15.26 **VARIANCE PROCEDURES.**

- A. The Board of Zoning Appeals, as established by the Board of County Commissioners, shall hear and decide appeals and requests for variances from the requirements of this article.
- B. The Board of Zoning Appeals shall hear and decide appeals when it is alleged that there is an error in any requirement, decision or determination made by the building officer in the enforcement or administration of this article.
- C. Any person aggrieved by the decision of the Board of Zoning Appeals or any taxpayer may appeal to the District Court of Harvey County as provided in K.S.A. 12-715.

Section 15.27 **CONSIDERATIONS FOR VARIANCE.**

In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, 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 damages;

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 conformity;
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 relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
8. The safety of access to the property in times of flood for ordinary and emergency vehicles;
9. 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; and
10. 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.

Section 15.28 **CONDITIONS FOR VARIANCES.**

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 the items listed below have been fully considered. As the lot size increases beyond the one-half acre, the technical jurisdiction required for issuing the variance increases.

1. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.
2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief
4. Variances shall only be issued upon (1) a showing of good and sufficient cause; (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (3) a determination that the granting of a variance will not result in increased flood heights, 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 resolutions.
5. A community shall notify the applicant in writing over the signature of a community official that (1) 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 \$100.000 of insurance coverage; and (2) such construction 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 article.

Section 15.29 **NON-CONFORMING USE.**

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

- A. If such use is discontinued for twelve (12) consecutive months, any future use of the building premises shall conform to this article. The County shall notify the building official in writing of instances of nonconforming uses where utility services have been discontinued for a period of twelve (12) months.
- B. Uses or adjuncts thereof that are or become nuisances shall not be entitled to continue as nonconforming uses.

Section 15.30 **RECONSTRUCTION.**

If any nonconforming use or structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the market value of the structure before the damage occurred, except that if it is reconstructed in conformity with the provisions of this article. 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.

Section 15.31 **AMENDMENTS.**

The regulations, restrictions and boundaries set forth in this article may from time to time be amended, supplemented, changed or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided, however, that no action may be taken until after a public hearing in relation thereto, at which interested parties and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in the official County newspaper. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Federal Emergency Management Agency. The regulations of this article are in compliance with the national Flood Insurance Program Regulations.

Section 15.32 **PENALTIES FOR VIOLATION.**

Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$499.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the County or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

