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BUILDING NEW FLOOD HAZARDS:  
NO THANKS. WE DON'T NEED ANY MORE.  
By Steve Hambley, Medina County Commissioner

You chose your new home specifically to live by the river. You wanted a picturesque view of the meandering stream embraced by a corridor of green shade trees, smooth rocks, and striking embanked soil without ever leaving your back patio. Ah... to be so visibly close to the beauty of nature, and yet find a comfortable and secure shelter in the new home constructed nearby. Who wouldn't prefer their new home amidst this idyllic scene in Medina County townships, especially if you came from one of the cookie-cutter suburban lots of Cuyahoga County? Why that's one of the reasons people move here. Isn't it?

Love at first sight can be a beguiling, but perilous experience. Never mind that after falling in love with the home and its scenic proximity to the stream, making a successful bid, starting the necessary financial paperwork, that your agent said something about *bla-bla-bla* and "a 100-year floodplain." Never mind that your bank said, "If you really like the house that much, you will have to pay a little extra each year for a flood insurance policy." "Flood insurance?" you ask. "You know, just in case."

Well after all, it has to be a good flood insurance policy because its being offered by good 'ol Uncle Sam. Not only that, they subsidize it so you don't have to pay the full price like you would if you had to go on the open market. Besides, what can happen? After all, if it really were a true flood hazard, the government wouldn't have permitted the house to be built in a flood-prone location, right? Right?

Unfortunately, not right. But how can that be? A puzzling question, especially when you consider that homes on the edge of a 100-year floodplain have a 26 percent chance of being flooded over the life of a 30-year mortgage. The problem simply put, is our laws and our values are in conflict with each other, and in conflict with nature.

According to 17<sup>th</sup> century political philosopher John Locke, the right to own property is a natural right superior to laws made by government. Our constitutional fathers incorporated that philosophy in the writing of the US Constitution. A viewpoint further articulated when they adopted the 5<sup>th</sup> Amendment, which included the phrase, "... nor shall private property be taken for public use, without just compensation."

What this means, particularly in a strong property rights state like Ohio, is that property owners typically want to build homes at a density in accordance with local zoning codes. They are convinced that the government has to allow them to subdivide and build at that density, regardless. In the minds of many of these private property owners, if the local government doesn't allow that requested density for some "public purpose" such as health or general welfare, then the government is taking their property for public use, without just compensation. Hence, they argue, that would be a violation of the 5<sup>th</sup> Amendment to US Constitution and counter to our national values. This outlines the property owners' side of the issue.

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For the public side of this complex issue, you have to start with the police power of state government. This is the authority to legislate for the protection of the health, morals, safety, and welfare of the people. The police power enables states to pass laws governing such activities as crimes, marriage, contracts, education, traffic laws, and land use. Therefore, state authorized zoning restrictions and building codes adopted by local governments are based upon the constitutional authority to protect the public. Many would rightfully argue that regulating the construction of new homes in known flood hazard areas is in the public interest and protects the welfare of the people. The problem is it has to be done in a way that local government does not violate constitutional law nor incur an overwhelming cost on the public treasury.

It is a bit tricky, but it can be done. In fact, Licking County has successfully addressed the problem since adopting the necessary regulations in 1996. The continued home building boom and recent events in Medina County indicate that it has to be done. The Medina County Planning Commission has seen an increasing frequency of encroachment into flood prone and marginally developable lands by major and minor subdivisions. Just recently, the Commission had to deal with a major subdivision that placed a long roadway section and 36 out of a proposed 130 homes in the 100-year floodplain. At the same time, one township is in the process of raising \$2.2 million in public taxpayers dollars to purchase 11 houses that are in a floodplain. While the Federal government may provide 75% of the money needed, the local government has to find over \$540,000 in local match to complete the sale. Regardless of the source, they are all public funds to purchase private property for a public purpose.

Granted, these homes were built in a flood hazard area over 15 years ago when public policymakers were less informed. In addition, only one or two of the owners might be the original homebuyers. Most of them would argue that they didn't know or they weren't told. Many would probably blame nearby new construction for raising the flood water levels. In this and probably many cases, these are accurate and valid explanations. This is where government is going to have to step in and, at the very least, prevent the building of any more of these flood hazards. Secondly, it should educate potential buyers of real estate that are already in flood hazard areas.

The Board of Medina County Commissioners is currently forming a County Flood Damage Prevention Committee and is giving that committee a number of tasks to be completed by the end of this year. Coordinated by the Medina County Emergency Management Agency, this committee will be directed to update the current Medina County Flood Plain Regulations and make recommendations regarding the following:

- Establishment of a Flood Plain Management and Damage Prevention Program.
- Participation in the Community Rating System under the National Flood Insurance Program in which annual flood insurance premiums could eventually be lowered as much as 20%.
- Becoming a cooperating technical partner with FEMA for updating county flood plain maps.

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- Other suggested changes in public policies that would further the public purpose of the program.

To make this all work out with the proper respect for property rights and the protection of the public interests will require thoughtful and inclusive dialogue between the various interested parties. Likewise, public participation will be paramount to balancing those interests. It will require an unrelenting pursuit of a vision of a county where our homes are not in calamitous conflict with nature and flood hazards are a distant memory.

Thomas Jefferson once wrote, “The whole of government consists in the art of being honest.” So to properly address this issue, we have to be honest about it. The problem is real and it won’t go away. As the Medina County Soil and Water District reminds us, flooding isn’t bad; it’s a natural process that helps to maintain the health of a stream or river. Flooding is bad when people decide to place buildings in the way of the natural overflow of the watercourse. To be honest about it, our message to those wanting to build subdivisions and homes that create new flood hazards should be, “No thanks. We don’t need any more.”