

Friday, March 22, 2013

Workshop Session 1

Time of Session: 9:00-10:00AM

Session Title: *Per Aspera Ad Astra*: Foreseeable Natural Hazards—A Safer Future for Universities [and Colleges] Founded on Ethics, Sustainability, Good Business, and the Law

Speaker: **Erin Capps**, H2O Partners, NHMA

Room: 236

Head Count: 42

Note Taker: Elizabeth Stites

PER ASPERA AD ASTRA: A SAFER FUTURE FOR UNIVERSITIES FOUNDED ON ETHICS, SUSTAINABILITY, GOOD BUSINESS AND THE LAW

Why Mitigate?

Not because we want to but because we should

Demographic Challenges

Climate change

~ Population

~disasters

→ More frequent hurricanes – projected Katrina style disasters (every 2-5 years)

Population is increasing

- Not space/ density near water
- More than half of Americans live within 50 miles of the coast
Chris Nelson – American Planning Association
2025 more than half of the built environment did not exist in 2002

How do you reach those working 9-5?

- ➔ Public mitigation planning
 - Issues:
 - Damage to infrastructure
 - “ “ research
 - Research into mitigation planning/ issues
 - Potential injuries/fatalities (safe rooms?)
 - Psychological effects
 - Hindered growth
 - Not only universities but communities
 - Loosing tax base
 - Students – grants – bonds

Mitigation → going beyond the minimum

Even if we perfectly implement current standards damages will increase

Safe Development is affordable

- ➔ The rate of return is huge
- ➔ Societal benefit is 4:1 return for hazard mitigation

Safe development examples have a societal return of 100:1

Mitigation trends – the ABA subscribed to a white paper on hazard mitigation

No adverse impact:

~Don't flood thy neighbor

~ upstream/downstream effects

~ensuring no adverse impact to surrounding community

No Adverse Impact (NAI) broadens property rights by protecting the property rights of those that would be adversely impacted by the actions of others. Prevents actions that communities are taking and (these communities) are then being sued by members. – Sovereign immunity.

Comment: St. Tammany – fill and lot drainage ordinances. NIA project: 1998 (fill ordinances passed) in order to mitigate drainage swills; canal....issues of liability by not regulating measures in advance.

Educate citizens on good neighbor policies.

Q. Take into account net benefit?

A. yes follow the principals of local ordinances and grant funding

~stakeholders

~environmental groups

~upstream/downstream

~public safety – lot of deference given to public safety in courts

~impacts of development

~ “ ” buildings

~ “” persons

~ design/ redesign to avoid adverse impact

~ require appropriate mitigation

➔ Turning the development policies around

Q. Has NAI been mentioned in the courts?

A. No

Common sense flood plane management

www.floods.org/index.asp?menuID=460

Wiggins et al. vs. Brazil Coal September 30 1982 expanded groundwater rights doctrine

Liability:

Who can sue a professional?

Anyone with standing.

Lawsuits happen when people are upset and people get upset when they don't feel heard.

Doctrine of due diligence

~ due diligence → interpreted as 'expert' level now

Proof of causation, of harm

- Forensic hydrology
- Forensic hydraulic engineers

Courts are looking at a higher standard of reasonable

Paul vs . Landsafe Flood Determination

5th Cir.

*Court noted that a flood zone determination was the kind of professional opinion for when it is foreseeable that justifiable and detrimental reliance by a reasonable person would be induced.

(basically people rely on the professional opinions of flood zone mappers to determine if they should get flood insurance)

→ Reason for reversal: the only reason Paul didn't buy flood insurance was because of their opinion

→ could start a slippery slope - -removing people from the field.

Q. What are/were the mapping conditions at the time?

Bottom line: Everyone should have flood insurance

Other issues: Galveston: when the new maps came out the base flood elevation was lower than the current recommendation.

People will look for anyone to sue -- legal field – put disclaimers in recommendations, have that qualifying statement.

Make it absolutely clear as possible – just because you're not in an area that shows it floods on a map doesn't mean that you won't flood

Floodsmart.org

Q, any cases against the city?

No

q. why?

Takings, properties, easements

The problem with counties and cities approving development

→ Potential liability?

Focus on Education, Outreach, Safety is a priority

*No Adverse Impact Planning

Land owners don't have absolute rights


- Nuisance
- Negligence
- Surface/ groundwater
- Hazard based regulation generally sustained against constitutional challenges

Projects:

Berm, etc... goal of protecting the public is accorded great deference

*B.N. Hazard mitigation grants fund only after there has been a disaster

Legal
Equitable
Practical
Defensible in court



still no way to prevent a law suite
do it right
Be conservative
Consider upstream/downstream

Q. Anti-development – houses boarded up, houses not going to sell- potentially a huge hazard impact on infrastructure – not being maintained.

Urban Blight/ blight in general → losing tax base hindering growth and development

What can we do in Mississippi, Alabama, Missouri where mitigation techniques require sounder structure

Buyouts – historical flooding plane/ zone creation of public space

HUD - Blight -> disaster created blight/takings issues

Abandonment doesn't equate takings

Issues with flying objects due to neglect

- No one has addressed the safety issues around blight and disaster
- Fate of housing stock after Sandy?
 - Dune Reconstruction
 - Easements
 - Evolving situation

- Research
 - Property rights
- No easy solution
- Work with academics and consultants and lawmakers
- HUD, FEMA, RISKMAP
- Focus on Outreach