

Before the Federal Emergency Management Agency

City of Charlottesville, VA)
)
Rivanna River)
)
Letter of Map Revision)

Case No.: 21-03-0301P

PETITION FOR RECONSIDERATION

INTRODUCTION

1. A prominent Charlottesville, Virginia developer wants to build 245 multifamily housing units on the floodplain of the Rivanna River. If the project lies within the regulatory floodway, federal law and state law does not permit the development. So, he hired a professional engineer to persuade FEMA, the regulatory agency with jurisdiction over floodplain boundaries, to modify the regulatory floodway. The professional engineer had a substantial personal economic interest in property that would be protected by the requested modification. He did not disclose this economic conflict of interest to the City or to FEMA. FEMA subsequently deflected the City's technical objections on the grounds that FEMA relied instead on the engineer's professional, independent, expertise.
2. Through this subterfuge, the developer and then the engineer, now are claiming development by right on the property, seeking to lock in their plans by gaining city approval of their preliminary site plan in order to immunize themselves

from any changes in the City zoning ordinances that could occur as early as six months from now.

3. The petitioners live in the area and would be adversely affected by allowing the subterfuge to go forward. They are asking FEMA in this petition to vacate or stay its modifications in the floodplain, to disclose the technical basis for its approved modifications, and to strike from the record of any floodplain proceedings information provided by the professional engineer.

PETITIONERS

4. Rebecca Jones Reilly resides at 528 Caroline Avenue, in Charlottesville, Virginia 22902.
5. Aaron Reilly resides at 528 Caroline Avenue, in Charlottesville, Virginia 22902.
6. Lise Stoessel resides at 413 Arbor Circle, Charlottesville, VA 22902.
7. Megan Chandler resides at 525 Caroline Avenue, Charlottesville, VA 22902.
8. [Zoé Edgecomb resides at 1424 Hazel Street, Charlottesville, VA 22902.](#)

FACTS

9. On October 29, 2021, FEMA issued a Letter of Map Revision (“LOMR”) to become effective on March 16, 2022.
10. The most recent, *independent* flood map for the stretch of the Rivanna River covered by the 2021 LOMR was issued in 2005. That flood map now has been

revised twice, in 2016 and 2021, upon request by Justin Shimp as the Engineer of Record.

11. The 2021/2022 revisions were based, in substantial part, on data and analysis submitted by Mr. Shimp to support the 2016/2017 revision;
12. In 2016/2017, FEMA rejected protests by the City of Charlottesville against Mr. Shimp's proposed LOMRs, deferring to Mr. Shimp as a professional engineer.
13. Mr. Shimp was not acting as an independent professional engineer when he made his submissions to FEMA; he had a substantial undisclosed economic interest in the revisions he was proposing.
14. Failing to disclose this self interest violated the ethical responsibilities of Mr. Shimp, under 18 Va. Admin. Code § 10-20-700.
15. The notice provided to the public of 2021/2022 revision did not provide sufficient information about the nature or effect of the proposed modification, sufficient to allow the public to comment on the proposal.
16. The notice provided to the City of Charlottesville and to the public of the 2021/2022 revision did not disclose Mr. Shimp's private economic interest
17. Shortly after the 2021 modification became final, Mr. Shimp submitted a preliminary site plan to the city of Charlottesville proposing to build a 245-unit multifamily housing project on the property which would have been within the regulatory floodway before the revision.

18. The petitioner became aware of the revision in the floodplain only as of the result of community concern about the proposed housing project on the floodplain.
19. If the floodplain map had not been revised, the proposed development, with its adverse effects on petitioners and their neighbors' property values, access to their property, and their health and safety would not be approved.
20. The petitioner understands the obligation to submit, initially to the CEO of the City of Charlottesville, and ultimately to FEMA, concrete scientific evidence that the revision is unsupported by the requisite scientific evidence. Petitioner is collecting those data at the present time and will be submitting them.

VIOLATION OF 42 U.S.C. § 1044

21. Paragraphs 1-20 are incorporated by reference as though fully set forth here.
22. The public notice of the 2021 revision did not meet the requirements of 42 USC § 4104 and of 44 CFR §§ 9.8 and 67.4.
23. The inadequacy of notice of the LOMR invalidates the revision which purportedly became final in March, 2022.

TIME LIMITS

24. Paragraphs 1-23 are incorporated by reference as though fully set forth here.
25. The ninety-day time limits for presenting objections or appeals to floodplan modifications in the FEMA regulations do not apply to petitioners, only to

property owners whose property is located within a floodplain and who want to have the floodplain retracted or narrowed.

26. Even if the revision was not invalid because of the inadequate notice, the fact that the petitioner did not and could not have received reasonable notice of the effect of the proposed changes on her property suggests that the administrator exercise discretion to waive the 90-day time limits of 42 U.S.C. § 4104(c).

VIOLATION OF ADMINISTRATIVE PROCEDURE ACT

27. Paragraphs 1-26 are incorporated by reference as though fully set forth here.
28. FEMA procedures for appealing or challenging LOMRs do not provide adequate remedies to petitioners because those procedures are limited to property owners who seek the retraction or narrowing of regulatory floodways.
29. The public notice of the 2021/2022 revisions did not meet the requirements of 5 U.S.C. § 553.
30. Deferring to Mr. Shimp's professional judgment when he was acting in his own self interest was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of 5 U.S.C. § 706(2)(A).
31. Overriding the City of Charlottesville's objections in the 2016/2017 revision without competent, independent, engineering evidence in the record was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of 5 U.S.C. § 706(2)(A).

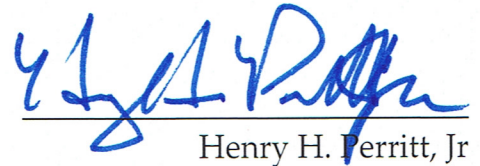
32. Overriding the City of Charlottesville's objections in the 2016/2017 revision without competent, independent, engineering evidence in the record represented action in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, in violation of 5 U.S.C. § 706(2)(C).
33. Adopting the 2021/2022 revision without adequate notice to the public constituted agency action without observance of procedure required by law, in violation of 5 U.S.C. § 706(2)(D).

RELIEF REQUESTED

34. Petitioner requests that:

- a. FEMA strike from the record supporting the 2016/2017 and 2021/2022 revisions any evidence or representations provided by Justin Shimp in his professional capacity
- b. FEMA stay the effectiveness of the March, 2022 LOMR, to allow the City and FEMA to give more complete consideration to all the aspects of the proposed project, including floodplain management and flood mitigation; and
- c. FEMA provide petitioner with the record, including the scientifically based concrete data, supporting its 2015/2016 and 2021/2022 LOMRs.

Respectfully submitted,



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Certificate of Service

I certify that a copy of this Petition was served on the following on October 4, 2022, via email at the email address indicated below:

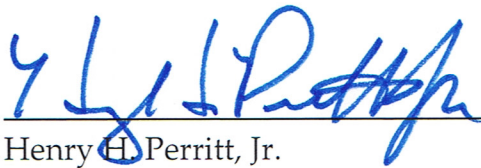
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A handwritten signature in blue ink, appearing to read "H. H. Perritt, Jr.", written over a horizontal line.

Henry H. Perritt, Jr.
Attorney for Petitioners