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Sliding into home

Asheville needs safe slope regulations now

by Lynne Vogel

In September 2004, Buncombe County was declared a federal disaster area in the wake of tropical storms Frances and Ivan. Twelve landslides were reported, and two structures – a home in Starnes Cove and a county fire station – were destroyed by landslides. Fourteen other Western North Carolina counties were also designated disaster areas.

At that point, both Asheville and Buncombe County clearly had to be aware of the potentially disastrous effects of landslides, flooding and erosion. The state notified the city and the county that the North Carolina Geologic Survey would be conducting landslide mapping to identify at-risk areas.

When the Asheville City Council was advised that the land under its jurisdiction is potentially hazardous, it was crucial that they respond promptly to this public-safety threat by rewriting the regulations governing slope development. But more than two years later, City Council still hasn't taken action, and Council members continue to debate the matter.

This summer, in response to intense public criticism, City Council instructed its planning staff to review the existing slope ordinance and propose new rules.

On Sept. 6, Planning and Development Director Scott Shuford sent his recommendations to the Planning and Zoning Commission for review. In his report, Shuford described the purpose of the proposed Steep Slope and Ridgetop Overlay District as follows:

"Asheville is in a unique geographic location where mountains, valleys and hills constitute significant natural topographic features. The mountains and hillsides of Asheville are visible from many places in the city, adding to the quality of life for residents and improving tourism opportunities for visitors. These areas are sensitive to development activities, and measures must be taken to maintain slope stability and to control erosion and storm-water. In order to ensure the preservation of the character and the appropriate use of hillsides, the regulations of this section are established to recognize that development of land in steep or mountainous areas involves special considerations and unique development standards."

Asheville residents and potential buyers of steeply sloping property here must be able to understand what's at stake, and Shuford's language doesn't begin to convey the gravity of the situation. It's the Planning Department's responsibility both to spell out the reasons for the proposed changes and to advise City Council on the potentially severe consequences of failing to adopt safe and enforceable slope-development regulations.

Here's what Shuford's report *should have said*:

"State and federal agencies have advised that Asheville's mountains, valleys and hills constitute a natural hazard zone. Buncombe County was declared a federal disaster area in 2004. Developers' use of dynamite and bulldozers on these potentially unstable slopes can cause landslides on the site itself and can destabilize adjacent property.

"Considering the possibly catastrophic effects of such environmental hazards, Asheville's Planning and Development Department recommends a moratorium on all slope development until the state-mandated landslide-hazard map for Buncombe County is completed next summer. At that point, the city can use this critical information to review and revise its slope ordinance as needed to restrict or prohibit construction in areas where geologic site studies show that disturbing the land is likely to precipitate landslides."

Like many cities, Asheville endorses the concept of "smart growth." But with most of the available bottomland already in use, expansion in Asheville inevitably involves the development of potentially suspect land. As a result, City Council's new development plan should be "safe growth," with all future planning dedicated to one purpose only: protecting the lives and property of the families who live in the city's mountains, hills and valleys.

How many permits has the city granted in the past two years for construction on slopes that are probably unstable? How many more will be issued before safe slope regulations are passed? Asheville's fragile and subdivided mountains will slide, causing severe economic damage: It's only a matter of time.

And when it happens, people suffering the partial or total loss of their homes due to unsafe building on unstable slopes will look to those responsible. Insurance companies aren't liable: All homeowner policies exclude damage caused by earth movement. But local governments can be held liable if their regulatory actions – or inactions – caused harm. In April of this year, the Supreme Court ruled that local governments cannot automatically claim immunity. Developers, contractors and real-estate agencies are liable if they knew about hazardous property conditions and did not disclose them.

Litigation will follow on the heels of the next local landslides, and those responsible for ensuring the public safety won't be able to plead ignorance. Asheville needs to enact meaningful safeguards now!

[Longtime WNC resident Lynne Vogel formerly owned a bed-and-breakfast in Asheville.]

For more information on landslides in Western North Carolina, visit www.northcarolinamountainhomesandresortssos.com.