



Memorandum

To: Planning Commission
From: Niall Connolly
Date: September 26, 2025
Re: Noncomplying Buildings

Introduction

On September 17th, the Planning Commission discussed the Town Council's direction to review two sections of chapter 10-21 of the Code (10-21-3 and 10-21-8).

10-21-3: NONCOMPLYING BUILDINGS:

*A noncomplying building or structure in any zone may be continued, provided no additions, enlargements or alterations are made to said building, except as allowed or required by law or as provided in other sections of this chapter. If any such noncomplying **building is removed**, every future building on the lot or parcel of land shall comply with the provisions of this title.*

The Commission talked about how best to define the *removal* of a building. In the recent case on Watchman Drive, the Town Council considered that the building had not been fully removed because the foundations were still in situ. However, given the ambiguity in the Code, the Council asked the Commission to define this more precisely.

The other section of the Code in question refers to "ordinary maintenance and repair". In the recent case at Watchman Drive, it was argued that it was necessary to remove and replace the walls because there had been significant water damage. Although removing all the walls of a building likely goes beyond the common meaning of "ordinary maintenance and repair", the definition of this term in the code is quite expansive. The Council determined that removing the walls in this particular circumstance could fall under the category of "ordinary maintenance and repair" as defined in the Code (see below):

10-21-8: MAINTENANCE, REPAIR, ALTERATION AND IMPROVEMENTS TO NONCOMPLYING BUILDING OR STRUCTURE:

Anything in this chapter notwithstanding, the following shall regulate the maintenance, repair, alteration and improvement of noncomplying buildings and structures. In all cases, where works constitute a substantial alteration of a structure, the works shall include measures, as necessary, to ensure the structure complies with town's current flood hazard reduction provisions, as set out in section 10-13A-8 of this title.

A. Ordinary maintenance and repair: Ordinary maintenance and repair of noncomplying buildings and structures is allowed so long as such maintenance or repair will not result in

expansion of any existing nonconformities or creation of new nonconformities. "Ordinary maintenance and repair" means improvements made to a building for the purpose of keeping the structure in a state of repair and protecting the structure from failure or decline. The term shall also apply to the rehabilitation of a building or structure which is in disrepair for the purpose of making the structure safe and sanitary, in accordance with local building code. Further, interior improvements within existing walls, not resulting in additional habitable space, shall be permitted.

B. Alterations:

1. Single-family dwellings:

a. A single-family dwelling having nonconforming aspects may be altered or added to if such alteration or addition will not result in expansion of any existing nonconformities or creation of new nonconformities.

b. When a single-family dwelling is nonconforming as to setbacks, additions or alterations shall be permitted on the first floor if such addition or alteration will not result in the expansion of any existing nonconformities or the creation of new nonconformities.

2. Multi-family dwelling or commercial building: *A duplex, multi-family dwelling or commercial building or structure having nonconforming aspects, but having a use that is conforming, may be altered or added to, with the approval of the Town Council, provided such alteration or addition will not result in an expansion of any existing nonconformities or creation of new nonconformities.*

Options

The Planning Commission discussed the pros and cons of some different approaches the Town could take to clarify this. The discussion is summarized below:

- "Removal" of a building could be defined as when a certain percentage of the building fabric is removed. For example, if more than 50% (or another percentage) of a building is removed, then the building would be deemed "removed", and therefore any subsequent construction would need to be in compliance with the current code. Determining what exactly 50% of the building fabric constitutes would require some thought.
- "Removal" of a building could be defined based on specific elements of a building - e.g. roof, studs, foundations, plumbing, electrical etc. For example, if more than two specific elements of a building remain, then the building is deemed to be still in place. This may be easier to define in practice than a percentage of building fabric.
- The Commission expressed some concern that if the Town took an overly lenient approach on the definition of "removal" or "ordinary maintenance and repair", it could militate against the

intention of the Code, which is that over time, noncomplying buildings are gradually phased out. There is also the question of fairness between property owners within the same zone.

- The Commission wished to explore whether it would be feasible, in certain circumstances, to take a broad interpretation of “ordinary maintenance and repair” in exchange for bringing the building into closer compliance with current ordinances. For example, if the improvements removed *some* element of noncompliance, even if it didn’t bring the building entirely into compliance. This may be a useful approach for some of the noncomplying buildings in the town center, because it would allow for renewal of some older buildings and remove some nonconformities, while recognizing it is unlikely that those properties would ever come into complete compliance.
- Sections 10-21-6 and 10-21-7 discuss the allowance for noncomplying buildings to be rebuilt in the event of a catastrophic event. The Code references fire, earthquake, explosion or other catastrophic event. During the Town Council meeting, there had been some discussion on whether the definition of “catastrophic event” could be interpreted to include rot or water damage that has occurred over an extended period. The Planning Commission discussed this on September 17th, but did not agree that this sort of damage fits the description of a catastrophic event.

Next Steps

The Commission should continue this discussion to define a policy approach that the Town could take on this topic. Some points the Commission could focus on are as follows:

Defining “removal” of a building

There are a number of different approaches the Commission could take. For example:

- The percentage of building fabric removed.
- The percentage of the value of a building (similar to FEMA’s substantial improvement/substantial damage calculation). If 50% of the value of the structure is retained, then it has not been removed, if less than 50% of the value of the building is retained, then it has technically been removed. The Town’s Substantial Improvement/ Substantial Damage Plan includes a methodology for determining the value of a structure. This plan is appended for information. Section 6 of the Plan covers this point. As this is an existing methodology that has already been adopted by the Town, it may be possible to repurpose it for use in our noncomplying buildings policy.
- Defining removal by specific elements of a building, or a combination of specific elements. For example, the foundations, studs, roof etc.

Defining “Ordinary Maintenance and Repair”

The Commission could explore the possibility of allowing a broader definition of ordinary maintenance and repair in cases where incremental improvements are possible. For example, in the central commercial zone, where it may not be feasible to bring a property into complete compliance, but it may be possible to achieve closer compliance incrementally through ordinary maintenance and repairs. This could have the dual benefit of facilitating renewal of some older properties.

Appendix: Town of Springdale Substantial Improvement/ Substantial Damage Plan, with appendices

TOWN OF SPRINGDALE

SUBSTANTIAL IMPROVEMENT/ SUBSTANTIAL DAMAGE PLAN

NOVEMBER 2022

1. INTRODUCTION

Because the Town of Springdale participates in the National Flood Insurance Program (NFIP), we are required to comply with FEMA's Substantial Improvement/ Substantial Damage program. This applies to properties in the Special Flood Hazard Area (SFHA). It means that when a property is remodeled or added to (substantial improvement), or repaired following damage from any source (substantial damage), it must be brought into compliance with the Flood Hazard Ordinance if those works are worth 50% or more of the value of the property. Compliance will include mitigation, such as raising floor levels above the base flood elevation across the whole building for residential properties, or flood proofing for commercial properties.

This plan sets out:

- How the Town will assess damage to property within the SFHA, following a disaster (e.g. following flood, fire, seismic events etc).
- How the Town will determine if works to properties constitutes Substantial Improvement (SI) or Substantial Damage (SD).
- The resources/ personnel to carry out this work.

The appendix to this plan includes templates and reference documents which support the plan.

2. LEGISLATIVE AUTHORITY

SI/ SD procedures in Springdale are established and regulated as per:

- Chapter 10-13A of the Springdale Town Code
- Chapter 10-21-6
- Title 9: Building Regulations of the Springdale Town Code

3. COMMUNITY ENGAGEMENT AND COMMUNICATIONS

Staff at the Town of Springdale will communicate SI/ SD permitting requirements in the following ways:

Pre-event

- Articles in the Town Newsletter covering flood issues (semi-annual)
- Targeted mail out to property owners in the SFHA explaining SI/SD (annually)
- One on one meetings with property owners at property owner's request
- Information page on Town website

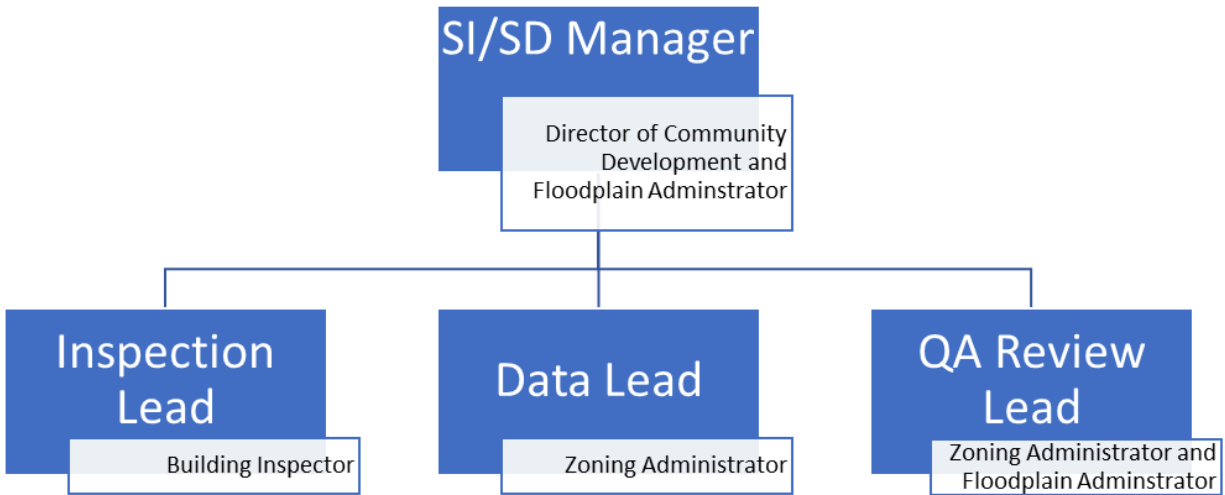
Post-event

- Determination Letter - Notice of Substantial Damage (appendix A)
- Determination Letter - Work does NOT constitute Substantial Damage (appendix B)
- Survey letter (appendix C - see survey used following 2021 flood)

4. DETERMINING IMPACT AREA

Immediately after an event, community officials will undertake an initial review of the extent of damage, including a broad characterization of the number of buildings impacted and the level of anticipated damage. Staff who will do this include:

- Building Inspector
- Floodplain Administrator
- Zoning Administrator
- Code Enforcement Officer
- Director of Community Development
- Streets Department staff



In some cases, the initial survey is followed by an official Preliminary Damage Assessment (PDA) coordinated by the local emergency manager and performed by teams (may include representatives from local building officials, floodplain managers, and if there is a large enough impact, the State and/ or FEMA as well). Springdale will use the results of the PDA to help identify significant damage and coordinated SI/SD inspections.

As part of the initial review, the floodplain administrator will compile a table listing the addresses of properties damaged by flooding which are located in the SFHA. The Town has a list of all properties in the SFHA which can be used to assist (see appendix D).

Next, the Building Inspector and Floodplain Administrator will visit affected properties, which are located in the SFHA. They will use the Construction Estimate Form (see appendix E and F) to assess damage.

Other Resources

As part of Springdale's Mutual Aid Agreement with others in Washington County, Springdale will also utilize available personnel from outside organizations to conduct damage assessments as needed. These individuals / agencies are included in the list below:

- Other Springdale departments
- Additional building inspectors from other communities in Washington County.
- Consultant building appraisers as needed.

Training

The Floodplain Administrator for the Town will keep up to date with flood regulations etc through training. The Floodplain Administrator will also provide training for the community development department on SI/SD annually. The Administrator will also provide training to the full Town staff periodically as appropriate.

5. DETERMINING TIMEFRAMES

Based on Springdale's recent experience (flood of summer 2021), individual property visits take an average of 30 minutes each and then a further 20 minutes to write up assessment.

Springdale will aim to have SI/SD determinations made and notified to property owner as soon as possible after the event, with the goal of within 1 week of the event.

6. ESTABLISHING A SUBSTANTIAL IMPROVEMENT/ SUBSTANTIAL DAMAGE DETERMINATION PROCESS AND METHODOLOGY

Staff will use the Construction Estimate Form (appendix E) to determine the cost of the improvements/ repairs, with information provided by contractors or householders. As appropriate, staff may verify these estimates by researching the current cost of materials and labor in southern Utah.

To determine the value of the structure, the Town will use a cost and sales comparison for residential structures, and an income capitalization approach for non-residential structures. As per FEMA guidelines on SI/SD, the value of the structure is used, and not the value of the property as a whole.

Using the cost of the works and value of the structure, the Town will make a SI/SD determination for each property.

For 0-40% and 60% -100% damage or improvement, assessments will be done by staff, as it is likely to be obvious whether substantial damage or improvement applies. For the 40%-60% category where it is harder to know with certainty whether the damage or improvement is substantial, assessments will be done by a professional appraiser. The Town reserves the right to consult a professional appraiser in all instances.

7. COMMUNICATING DAMAGE TO PARTNERS

This section describes how the Town will communicate with State and Federal officials if the scale of the incident is such that additional resources are needed to make SI/SD

determinations. This will arise if the Town foresees it will be unable to complete the SI/SD determinations within 3 weeks of the event.

State Communication

The position responsible for communicating SI/SD information to State partners is

- Town Emergency Manager (to communicate with County Emergency Departments) and;
- Floodplain Administrator (to communicate with State Department of Public Safety rep i.e. Tracie Harrison).

Federal Communications

The position responsible for communicating SI/SD information to Federal partners is Town Manager, Mayor, Emergency Manager and Floodplain Administrator. Federal Partners will be contacted if, in consultation with State partners, the Town foresees it will be unable to complete the SI/SD determinations within 3 weeks of the event, having already exhausted local and state resources.

Federal Partnering Agencies include FEMA, NPS and the BLM.

Communication Method: Federal Partners will be contacted if, in consultation with State partners, the Town foresees it will be unable to complete the SI/SD determinations within 3 weeks of the event, having already exhausted local and state resources.

8. COMMUNICATING SUBSTANTIAL IMPROVEMENT/ SUBSTANTIAL DAMAGE INFORMATION TO STRUCTURE OWNERS.

The Town will aim to notify residents of the SI/SD determination within 1 week of an SI/SD assessment as per the detailed process identified in section 5.

Springdale will use the following means of communication for notifying structure owners of SI/SD determination and the appeal process:

- Determination letters (see appendix A and B) by mail or email. Depending on the scale of the event, Town staff may confirm the determinations to property owners over the phone as a courtesy, in addition to providing written confirmation.

Appeals

A. Location of Appeals Language:

The SI/SD appeals process is documented in the Town Code 10-6

B. Appeals Review Body:

Springdale's appeals process allows for structure owners to voice dissent and potentially change the process. The community will also work to ensure SI/SD determinations are accurate, consistent, and defensible. The process is set out in the Town Code 10-6

The Town uses an administrative hearing officer as the Town's appeal authority to hear and decide appeals.

9. MONITORING AND REINTEGRATION

Following the event, resources that have been activated will be demobilized on a staggered basis.

Any Town departments (other than the Community Development department) who have assisted with SI/SD property surveys will stand down once surveys are complete.

Once all SI/SD determinations have been made, and property owners have been notified, any state, county or FEMA resources will stand down. If there is a high volume of permit applications to be determined, the Town may request state, county or FEMA partners to assist with permit review. If the permit workload is manageable, state, county or FEMA resources will stand down, and the Planner and Zoning Administrator from the Community Development department will continue processing permit applications.

Once the permitting workload is complete, and prior to demobilization, the Community Development department will replenish any diminished office supplies as needed, and arrange for payment of invoices from any consultant services used. The Community Development department will also ensure that record keeping protocols are followed during the incident. Prior to demobilization, the Floodplain Administrator will check to ensure any required records are appropriately saved.

Any appeals of the SI/SD determinations will be managed by the Community Development department. Due to the extended timescales involved in the appeals process, these will likely continue after formal demobilization, and run in parallel with the usual day to day work of the Community Development department.

Springdale will integrate SI/SD follow ups into the regular permitting and appeals process based on internal SOPs for permit review. These SOPs state the need to check for SI/ SD for any development project on a structure in the Special Flood Hazard Area.

10. SUBSTANTIAL IMPROVEMENT

This plan mostly deals with the Town's procedures for evaluating substantial damage. However, SI/SD applies equally to permit applications for improvements to buildings in the SFHA which aren't as a result of a disaster.

The process for evaluating whether works amount to a 'substantial improvement' is similar to substantial damage, however there are some differences.

Typically, the Town will become aware of potential SI when an application for a Design Development Review (DDR) is received. As part of the review of any application, the planner will always check if a property is within the SFHA. The planner will normally be able to make an assessment on less than 40% and more than 60%, on the basis of the plans provided. Where it is unclear, we will follow the process above for estimating the cost, and if necessary, retain the services of an appraiser to help make that determination. The property owner will be notified in the same manner as the SD determinations. An appeal of this process is also available, as outlined above.

TOWN OF SPRINGDALE COMMUNITY DEVELOPMENT DEPARTMENT

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Substantial Improvement/Substantial Damage (SI/SD) Construction Estimate Form

Parcel ID No:
Property Address:
Owner Name:
Contractor Name:
State License No:
Phone:

I hereby attest to the fact that I, or a member of my staff, personally inspected the above-mentioned property and produced the attached itemized list of repairs which are hereby submitted for a **Substantial Improvement/Substantial Damage Review**. These improvements/damages are **ALL OF THE IMPROVEMENTS & DAMAGES** sustained by this structure, and that all repairs proposed on the subject building are included in the estimate.

This disclosure is to comply with substantial improvement/substantial damage as defined in **44 Code of Federal Regulations 59.1**: *any reconstruction, rehabilitation, addition, or other improvements of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structure which have incurred "substantial damage", regardless of the actual repair work performed.*

See attached itemized list	Total Labor & Materials	\$ <input type="text"/>
	Overhead & Profit	\$ <input type="text"/>
	Total Cost	\$ <input type="text"/>

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Contractor Signature

Date

SI/SD Construction Estimate Form

Please attach any additional information (e.g., signed construction contracts)

Parcel ID No:
Property Address:

Items	Materials Cost (include Sales Tax)	Labor Cost
Demolition & Debris Removal		
Site Prep		
Foundation Repair		
Floor/Floor Coverings		
Interior Walls/Wall Coverings		
Exterior Walls/Siding/Finish		
Insulation		
Doors & Windows		
Plumbing		
Electrical System		
HVAC System		
Cabinets & Millwork		
Built-in Appliances		
Attached Decks & Porches		
Other		
Construction Management		
Overhead & Profit		
Total		

--

Contractor Signature

Date



Tom Danise, *Director of Community Development*
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SI/SD Construction Estimate Form Instructions

The SI/SD form must be filled out by a Utah Licensed Contractor, or the owner of a residential structure that is used for their own person, non-public use (owner occupied).

What it **must** include:

- Cost (including sales tax) of all material and labor required to bring the structure back to its pre-damaged state.
 - *Note: must include estimated value of owner or volunteer labor and donated or discounted material
- Site prep and foundation repair
- Demolition and construction debris disposal
- Structural elements and exterior finishes
- Interior structure and finish
- Built-in appliances, cabinets, furniture
- Utilities and service equipment
- Construction Management
- Overhead & Profit

What it may **exclude**:

- Clean-up and trash removal (not related to demolition and construction debris removal)
- Temporary stabilization of the building



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- Cost for plans, specifications, surveying or permitting
 - Carpeting or recarpeting over finished floors
 - Outside improvements, including landscaping, irrigation, sidewalks, driveways, fences, yard lights, swimming pools and spas, pool enclosures and detached accessory structures like garages, sheds and gazebos
 - Cord and plug appliances such as washing machines, dryers, stoves

When the form is completed, submit to the Springdale Community Development Department in person at 118 Lion Blvd or email to nconnolly@springdale.utah.gov