

TOWN OF THORNTON BOARD OF SELECTMEN MEETING MINUTES

Meeting Date: May 22, 2012

APPROVED

The Board of Selectmen met and held a public meeting on Tuesday, May 22, 2012 9:00 AM at the Thornton Town Hall.

At 9:00 a.m. Chairman Burbank opened the business meeting with the salute to the flag.

Board Members present: A.W. (Butch) Burbank, Roy Sabourn, Brad R. Benton, Steve Morton and Marianne Peabody

Planning Board members present: Carolyn Piantedosi, Gloria Kimball, Fred Gunter, Russ Gilman

Zoning Board members present: Jim Demerritt, David Gravel

Staff present: Tammie Beaulieu, Administrator; Clint Rand, Planning Board Assistant, Jessi Fleury, Secretary.

Chairman Burbank stated that the meeting was scheduled as an informational meeting for the board of selectmen with no public comments. The meeting was requested to educate the board on flood plain issues, to address any deficiencies.

Jennifer Gilbert introduced herself from the State Office of Energy and Planning, the state coordinator of the flood insurance program. She works with the communities that participate in the program. There are 214 communities in the state that are on the program. Ms. Gilbert assists these towns with flood plain regulations, mapping, flood insurance and how to address potential deficiencies.

Ms. Gilbert provided an overview of the town's involvement with the flood program. She stated that Thornton joined the NFIP program in 1986 and adopted regulations in 1986. The flood maps that the town is using were created in 1986. The main map that the town is working with is dated April 2, 1986. From 1986 through 2008, the town has been working with a very basic map. In 2008, FEMA updated the maps nationwide; Grafton country was completed in 2008. As part of the map adopted process, her office reviewed the towns flood ordinance in 2006 and had asked the Town of Thornton to make some changes to their ordinance in 2007. Ms. Gilbert stated that the documents the town has on the web needs to reflect the correct information. Ms. Beaulieu informed Ms. Gilbert that the town had passed the ordinance but it was not implemented into the town zoning ordinance. This has been fixed and will be updated on the town web site. Ms. Gilbert also stated that the subdivision and site plan regulations need to be updated as well, and she will help the planning board with this. The subdivision regulations have some of the requirements in them, however the site plan review regulations lacks the requirements completely. Ms. Gilbert stated that she has sample wording and can assist the planning board during a public hearing.

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The town has adopted the minimum regulations as required by the NFIP. It is encouraged, that the town create more stringent regulations. She offered to leave information with the town including hand outs and fact sheets.

Chairman Burbank stated that he would like each selectmen ask questions one at a time. He explained that personally he would like to learn the correct process and make the right decisions.

Steve Morton asked what the permit process is and what has been done since 2007. Currently there is a question on the building permit if the property is in the designated flood area and this begins the process. Morton asked if the signed building permit by the Selectmen serves as the actual building permit for anything in the flood plain. Morton asked if that process was acceptable. Ms. Gilbert replied that the use of a building permit is acceptable; she cautioned that the word development in the NFIP is very broad and goes beyond buildings and the town would need to have something else in place to capture other developments than buildings. She explained that if someone were coming in to place fill or gravel on their property in the flood plain, they would require a permit, but it would not require a building permit. Ms. Gilbert provided a sample flood plain development permit that would capture all development, and explained that some towns have used this form and made it specific to their town needs. Ms. Gilbert encouraged the board to make it specific to Thornton.

Chairman Burbank stated that Ms. Gilbert mentioned the need for a permit for roads, and gravel, and asked what other types of non-structure development would need a permit. Ms. Gilbert replied that fill is one of the most common; FEMA wants a permit for anything that can alter the flow of water. The board has some discretion in small items like putting in a flagpole or a garden, but not when the development could alter the direction of water, such as solid fencing or berms. Chairman Burbank asked if the Selectboard or the Planning Board could grant an exception. Ms. Gilbert stated that either board can make the exemption and that some towns have put in their ordinance that small developments under \$500 or of a certain size can be exempt from the permitting process. Even though some towns have this wording in their ordinance, most do not. Morton asked if there was a test criteria to determine if a development should be exempt from the permitting process such as if there are flat roads and they are coated with gravel and it doesn't change the flood height or change the direction then can that be an exemption. Ms. Gilbert stated that there is not a specific use that is exempt from the flood plain permitting. Chairman Burbank clarified that it is not the use that is exempt, but rather if the development will alter the water flow. Morton asked if there are permitted uses such as special events or campgrounds. Ms. Gilbert replied that FEMA does not look at the specific use, but looks at what is specifically being placed in the flood zone, such as fill, building, or development. Morton asked if there is a first floor

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flood elevation requirement or something with no walls or a basement and would this meet the definition of a structure. Ms. Gilbert stated that there is a specific definition for a structure, and if that building is a structure then it would have to meet the lowest floor elevation requirements. She explained that the base flood elevation is part of the requirements in the subdivision/site plan regulations. A base flood elevation is required if the development is 50 lots or 5 acres or more. When there is a development in the flood plain, such as a single family house, unless it is required by the town, a base flood elevation is not required. However, a basement should not be installed due to insurance reasons. Some communities allow basements to be installed in flood zones and it significantly raises the insurance cost. If a basement is in a base flood area, without a base flood elevation, the homeowner is going to pay \$4-\$6,000 in flood insurance. The basement would need to be raised to meet elevation 2 to 5 feet above the highest adjacent grade to prevent an increase in premiums. Ms. Beaulieu asked if it is the town's responsibility to inform the applicant of all the potential insurance cost when they apply for the building permit or is it the applicant's responsibility to meet these requirements so that the homeowner has reasonable insurance premiums. Chairman Burbank also stated that the town has no building inspector only zoning enforcement, the town puts responsibility on the homeowner to know what they have to do to comply. He asked if the town is meeting their obligation for participation in the flood insurance program, albeit minimal without a building inspector. Ms. Gilbert stated that she cannot say for sure without reviewing the building application. She stated that she helps the town's review what is going on in the town, and their permits to make sure they are in compliance with the flood insurance program. Ms. Beaulieu stated that the town currently has two building permit applications for development in a flood zone and would like Ms. Gilbert to guide them. Ms. Gilbert agreed to review them today before she leaves. She explained that there are many towns that do not have a building inspector and the town needs to understand the regulations, and make sure that the building applicant is aware of the repercussions if the regulations are not followed.

Ms. Gilbert explained that some people do not have a mortgage and therefore are not required to have flood insurance, however when they attempt to sell the property then they may have a difficult time if it does not meet flood standards. Ms. Gilbert has a handout that explains this. Ms. Beaulieu suggested that packets of information be provided to residents who are applying for a building permit and they are in a flood area.

Sabourn asked Ms. Gilbert to explain why a base flood elevation is required if the development is 5 acres or more. Ms. Gilbert replied that if there is a development that is 5 acres or more and there is flood plain in any portion of the property, then a base flood elevation would be needed for any type of structure in the flood plain area. If nothing is being built in the flood zone, then the base flood elevation would not be needed.

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Selectman Morton stated that surrounding towns do not spend much time with the FEMA permitting because the applicants are provided the information and certifying that all other permits have been received. He asked how the town can verify that the applicant has received the necessary permits. Ms. Gilbert stated that the applicant can give written notice that the permits have been received. Initially once the applicant checks off that they are in the flood plain, the town needs to verify and provide them with the information and permit application, and the applicant needs to provide the rest of the information. FEMA has an elevation certificate, which is not required by towns, but she highly recommends. It can be used by towns for 3 reasons, to make sure an applicant is building in compliance, a specific section in the elevation certificate for zone a, without base flood elevations and it specifies what the lowest floor is in relation to the highest adjacent grade and it can also be used as a LOMA. The town can use this to verify during construction. Some towns that do not have a building inspectors require that the applicant provides an elevation certification but if it is not verified and the building did not follow the elevation certificate requirements that were submitted, then the building is not in compliance. This is an actual case and the homeowner has to pay over \$6,000 per year in insurance premiums. Ms. Beaulieu asked what position would verify that the applicant is building in compliance with the elevation certificate. Ms. Gilbert stated that an engineer or surveyor completes the certificate of elevation at the expense of the applicant, and the town should verify that the numbers match on the plan during the building process.

Selectman Sabourn asked how the town can convince an applicant without a mortgage to bear the expense of an elevation certificate. Ms. Gilbert replied that the guidance of FEMA is to build 2 to 5 feet about the highest adjacent grade for insurance purposes, if the town knows that there has been a flood that has been higher than that level than the town can require the first floor be higher. It is up to the discretion of the town as to how they want people to build in a zone a. Ms. Gilbert stated that even though the elevation certificate is not required, there are consequences regarding flood insurance.

Selectwoman Peabody asked if the town's elevation certificate is done by FEMA. The ordinance states that the town has to keep on file certain elevation data. She highly recommends that the FEMA elevation certificate be used, it can benefit the town, the applicant and for a flood amendment. She provided a handout explaining this.

Ms. Beaulieu asked if other towns are charging an additional fee for a building permit for building in a flood plain. Ms. Gilbert has not spoken to other towns about application fees, she will look into it.

Selectman Sabourn stated that the town can ask for the flood certificate, but cannot require it. The flood certificate can be for a proposed structure, but will need to provide a

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second flood certificate that reflects the actual building that was built if it was changed, so that the building is not changed after a flood certificate is received. Ms. Gilbert recommended that the certificate be requested so that the town can verify that the first floor requirements are being met according to the flood certificate and the final certificate is created at the end of construction and this is forward to the insurance company.

Chairman Burbank asked what the role of the enforcing body, the board of selectmen, are they meeting the requirements for the flood insurance program. He wants to make sure that the selectmen are meeting the requirements of the flood insurance program with the minimal requirements they have in place now? Is it the builder's responsibility or the town's responsibility to make sure the applicant follows the recommendations? Chairman Burbank stated that he would also like to give Clint Rand, the town's enforcement officer a chance to ask some questions as well. Ms. Gilbert agreed that it is the builder/applicants responsibility to have the necessary permits but that there are recommendations that the town can do to move further. Burbank acknowledged that the regulations need to be updated. Chairman Burbank asked Mr. Rand if he had any questions. Mr. Rand replied he did not.

Chairman Burbank stated that the board signed a building permit for an applicant to build in a flood zone, is the as-built all that is required? If the applicant is not in compliance does that town need to do anything besides show that it is not in compliance. What can the town do if it is not in compliance? Ms. Gilbert recommends that the town require information along the way so that there is no problem at the end of construction. Ms. Gilbert stated that the building would be a non-compliance structure and it gets tricky if they do not have a base flood elevation. The regulations do not specifically state how to build a structure in a zone a area. Burbank also stated that the regulations do not state what the town should do if it is not in compliance. The ordinance states that the structure needs to be reasonable safe from flooding. FEMA recognizes that sometimes structures are not compliant, and the penalty is decided on a case by case basis. FEMA and the state work with the communities to prevent the town from losing the federal insurance program, however it can happen if there is a repeat offender situation. The town would have to go through the process of notifying that the residents are not in compliance and that process depends on each situation and what has been happening. The state and FEMA will work with the town to prevent this type of situation from happening.

Selectman Morton stated that if the town is vigilant, has a process in place and provides notification to applicants of the flood regulation requirements then the town has done what they can to comply. Selectman Morton asked if there is a specific file system for

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FEMA to review if needed. Ms. Gilbert reviewed the towns process and feels that as long as the information is accessible than the file system is fine.

Ms. Beaulieu stated that there should be an indication on the subdivision/site plan application for the need of a FEMA application. Selectwoman Peabody thinks that there is indication on the checklist.

Jim Demeritt recommended that the Planning Board and the Board of Selectmen create a set of regulations with specific requirements for everyone to meet that is developing in a flood zone, to insure that the development or the criteria is being met. Chairman Burbank stated that this meeting is designed for questions for Ms. Gilbert and he recognizes that the town needs to meet later on to create another process. Demeritt is concerned that the applicant needs to know what the consequences may be when building in a flood zone.

Fred Gunter agreed that the subdivision and site plan review regulations need to be updated by the Planning Board with assistance from Clint Rand to include the flood regulation requirements.

Chief Moller asked about encroachment certification, she asked for a desk reference for flood plain management. Ms. Gilbert stated that the encroachment certification is only for a zone A area with a base flood elevation and the Town of Thornton does not have a base flood elevation. The CFR reference is for a model C ordinance and Thornton is a model B ordinance, so that regulation does not apply to Thornton. Chief Moller clarified that people do not have to show what they are doing on their property if it will not increase the flood level on neighboring properties. Thornton does not have a base flood elevation so the certification is not required. Ms. Gilbert stated that zone A's are very gray areas.

There are ways the town can determine an estimated base flood elevations.

Ms. Beaulieu asked for clarification on the new forms within the building permit file. Ms. Beaulieu stated that the selectmen have a process in place for new forms, where typically the board of selectmen approves the use of any new form within the office before they are used. Ms. Beaulieu referenced the flood plain application and checklist that was put forth by the code enforcement officer. Ms. Gilbert stated that she had created these forms to help towns get started, but it does not apply to every town and the Town of Thornton should create forms applicable to their town. Ms. Beaulieu asked if the forms are required or if the board decides to use them. Ms. Gilbert agreed to help customize the forms with Ms. Beaulieu and Mr. Rand. The checklist is a sample as well, and can be customized including applicants signature that the town has provided information regarding the flood plain information. This proves the town has done due

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diligence in informing this information. Ms. Gilbert also suggested adding a liability clause.

10:08 a.m. Chairman Burbank recessed the meeting to meet with town counsel.

Chairman Burbank reconvened the meeting at 10:40 a.m.

****Motion****

10:45 a.m. Vice Chairman Sabourn motioned to adjourn. Seconded by Selectman Morton. Roll call, motion passed 5-0.

Respectfully submitted,

Jessi Fleury
Board Secretary
Draft Posted 5/24/2012