

## D. INSPECTIONS

You can't assume that construction and development will proceed as spelled out in the permit you've approved. Follow-up conversations and inspections are vital to ensure that the applicant adheres to the permit's requirements.

Taking a hands-off attitude toward construction can create many problems for both the project's owners and your community.

The most effective way to ensure compliance is to inspect the site frequently during construction. This is particularly important in the early phases of work on a building because that's when errors in location or elevation of the lowest floor can be found and corrected. An inspection program also puts builders, developers and property owners on notice that the community will insist that projects are completed in compliance with regulations.

We recommend a series of three inspections for every project, especially any project that involves construction of a building.

### FIRST INSPECTION

Do this inspection before ground is broken. Ideally, this site visit should be after the site is staked out to allow you to check the plans in relation to the ground and lot boundaries. With plans in hand, you should determine that the site as identified on the proposed plans is consistent with actual ground conditions.

Check the following:

- The location of the floodplain and floodway boundaries.
- Setbacks from lot lines, channel banks, etc.
- Floodway encroachments, if applicable.

If the building, filling, etc., as staked out is in violation of the approved plans or of the ordinance requirements, you must tell the developer to make revisions.

The project must not be allowed to proceed until you have gone back and verified that it is in compliance.

## **SECOND INSPECTION**

Schedule your second inspection of a project involving a new building or addition to a building just before installation of the lowest floor. You need to ensure that the lowest floor will be built at the height stipulated in the permit application, and that the foundation is the type specified in the plans.

The type of foundation dictates your schedule:

- If the building is on a slab foundation, the inspection is best done when the forms are placed. You can check the proposed floor elevation by checking the elevation of the top of the forms. If the forms are high enough, you can approve the pouring the slab.
- If the building is on an elevated foundation (crawl space, piles, etc.), the inspection is best done when the foundation is completed. If the top of the foundation is high enough, you can approve placement of the floor.
- If the building is to be floodproofed and the floodproofing technique is easy to identify—such as a reinforced concrete stem wall up to the BFE plus freeboard—this inspection should be conducted when that portion of the project is completed.

Making sure a structure is properly elevated is the key to the entire regulatory process. If this doesn't happen, the permit process is pretty much for naught. Therefore, an inspection at the point of initial construction, where changes to the height of the foundation can be made without major difficulty, is best. Once the foundation is poured or laid, it can be very expensive for the property owner to change the building location or the elevation of the lowest floor.

### **Checking elevations**

You can confirm the floor elevation at this stage in one of two ways. First, you can have the builder submit a survey of the floor elevation. This survey must be done by a surveyor or engineer.

The alternative approach is to check for yourself:

- Before construction or sometimes as part of the first inspection, the developer's surveyor or your engineer can shoot an elevation reference mark to a nearby stationary object such as a tree or telephone pole. The mark should

be at the same elevation as the height to which the lowest floor should be elevated.

- During the second inspection, you can use a hand level to determine whether the lowest floor will be as high as the reference mark.
- This will give you a rough estimate that the building will be close to the correct elevation. A hand level will not give accurate elevations so, if you are in doubt obtain, a survey.

Note: Neither approach relieves the builder of having to provide an as-built elevation or floodproofing certificate when the project is done. It simply verifies that the building will be elevated or floodproofed to the proper elevation before it is too late to make changes.

During your second inspection, also check:

- Whether any fill meets the necessary compaction, slope and protection standards contained in your regulations.
- The building's location matches the permit application plans.
- The number and size of crawlspace or enclosure openings.
- Whether any part of the project encroaches into the floodway.
- In V Zones, get an as-built foundation certification at this time, such as the V Zone certification in Figure 5-18.

### **THIRD INSPECTION**

The third and last inspection is conducted as the project nears completion. The purpose of this "final" inspection is to:

- Ensure that the foundation and floor elevation has not been altered since the second inspection.
- Obtain an as-built elevation or floodproofing certificate.
- Verify that enclosures below the lowest floors have adequate openings.
- Ensure that nothing subject to flood damage, such as a furnace or air conditioning unit, has been located below the lowest floor.

- Check breakaway walls in V Zones.
- Check for floodway encroachments.
- Check the anchoring system used in securing manufactured homes.
- You may wish to obtain photographs during the final inspection to document compliance and retain the photographs in the permit file. These photographs can be useful if the property owner later makes alterations to the building without obtaining permits. Be sure to document the date and circumstances under which the photographs were taken.

## **Certificate of occupancy**

After the project passes final inspection, many communities issue a document called a certificate of occupancy, certificate of compliance or use permit.

This certificate allows the owner to move in to the newly constructed building or addition. Usually a new building cannot be sold until the seller has this certificate; some utility companies will not start service until the certificate is presented.

Before a certificate is completed, you must make sure that all needed documents are received and checked. You must have an elevation certificate and the other forms noted in the later section on record keeping.

## **LATER INSPECTIONS**

Certifying a structure for occupancy is the final step in the permit process. However, the property must remain in compliance with your ordinance and the conditions under which the permit was issued.

Your office should periodically check to ensure that the property continues to remain in compliance over time. Later inspections are particularly important when a structure contains an enclosure below the lowest floor. Such areas can be easily modified and made into habitable spaces in violation of regulations.

In some states, communities do not have the statutory authority to go onto private property to look for violations. This can make it hard, if not impossible, to verify whether an enclosed area has been modified. If this is true in your community, your ordinance should prohibit enclosures or limit their allowable size to less than 300 square feet. Allow

larger enclosures only if they have wood lattice or screening so you can tell from the street if changes have been made.

## **E. ENFORCEMENT**

Adequate, uniform and fair enforcement means two things:

- All development in a floodplain must have a permit.
- All development with a permit must be built according to the approved plans.

In order to ensure that development is meeting these requirements, you must monitor the floodplain, and where necessary, conduct an inspection of a property. Some permit officials have statutory limits on where they can go to inspect a potential violation. Be sure to review your authority to access onto private property with your attorney.

If you discover development activities without permits or contrary to the approved plans, you must enforce your ordinance. You have several methods for enforcing your ordinance. This section explores these methods.

## **VOLUNTARY COMPLIANCE**

The best approach is to convince the developer or property owner that complying with the ordinance is in his or her own best interest. This may take some explanation of the flood hazard and how the rules protect the property (or neighboring properties) from that hazard.

If the issue is protection of a building, the flood insurance rate table in Figure 9-3 can show how expensive insurance could be. Even if the developer or the current property owner is not interested in flood insurance, future owners may want it and probably will be required to purchase it as a condition of a mortgage or loan. Expensive flood insurance may make the building very difficult to sell.

Should voluntary efforts not work, here are the other compliance tools you have.

## **ADMINISTRATIVE STEPS**

Your first steps in enforcement involve what you can do as an ordinance administrator. Be sure to review these with your community's attorney before you start:

- Contact the property owner or building contractor in person or by telephone to explain your concerns.

- Notify the property owner (in writing) of the nature of the violations and what to do to correct them.
- Post a violation notice on the property.

If a problem is found during construction of a permitted project, you have additional tools:

- If the violation is a serious one, or if the problem still exists after a follow-up inspection, you can issue a stop-work order or revoke the permit.
- You can withhold the certificate of occupancy until the problem is corrected. Usually utilities will not be turned on or a bank loan will not be closed until the certificate of occupancy is issued.

## LEGAL RECOURSES

If your administrative measures do not bring results, go back to your community's attorney and discuss the next steps. Your attorney can take the case to court and request two additional enforcement measures be brought to bear.

You can help the attorney by having complete records of all correspondence and meetings with the person accused of the violation. You should also identify what section of the ordinance was violated, when and how, and what was specifically allowed in the approved permit.

You should advise the attorney about what actions can be taken that will bring the project into compliance. Depending on the violation, these actions could include removing the building (or other project), retrofitting the building to protect it, applying for a variance, or revising the maps to remove the problem from the floodplain, floodway, V Zone, etc.

**Fine.** Your ordinance should establish a maximum fine per offense. Usually each day a violation continues is considered a separate offense. This approach encourages a quick remedy to the problem.

A per-day fine for a summary offense from a local district justice or magistrate can be difficult to get because many courts would believe that such a severe financial penalty does not fit the infraction. However, the threat of seeking the fine may be sufficient to persuade a property owner to remedy the violation.

**Recordation.** Depending on your statutory authority, you may be able to re-record the violation in the property’s deed records. This will inform potential purchasers as well as “cloud the deed,” making it hard for the owner to sell the property or the buyer to obtain title insurance. This approach is more appropriate for new developments that are likely to be sold in the near future.

**Injunction.** An injunction is a court order to stop further noncompliant conduct. A temporary restraining order will be issued if the activity can be shown to be a danger to the public and that immediate irreparable harm can occur.

**Housing court.** Dealing with your state or county’s judicial system can be expensive and difficult. Your case has to wait its turn and compete with many cases for attention.

To speed up the enforcement process, some communities enact special enforcement ordinances to create a municipal housing court or a building court. This is a local judicial body that has several advantages:

- The judge or administrative judge will be familiar with housing or building code law.
- The community has more control over when cases will be heard.
- Such courts usually are less formal. For example, the defendant may not have to have an attorney present.

The establishment of these courts varies by state law. Your attorney or state department of local government affairs or housing can provide more information on how it can work in your community.

## **SECTION 1316**

Section 1316 of the National Flood Insurance Act authorizes FEMA to deny flood insurance to a property declared by a State or community to be in violation of their floodplain management regulations.

Section 1316 is used when all other legal means to remedy the violation have been exhausted and the structure is still noncompliant. Section 1316 is a way the NFIP can support communities in the enforcement of their ordinances. Check with your state NFIP coordinator or FEMA Regional Office on how Section 1316 works in your state.

If invoked under Section 1316, denying flood insurance means:



- The property may be difficult or impossible to sell.
- The market value of the property may fall.
- The cost of suffering flood damage without insurance may be too great a risk for the property owner.
- Lending institutions holding the property's mortgage may threaten to fore-close.
- Any permanent reconstruction will be denied disaster assistance.

In some cases a Section 1316 insurance denial will be sufficient to convince the property owner to correct the violation. Section 1316 also has the advantage of limiting any taxpayer liability if the building is damaged by a flood, as the owner will be ineligible for an insurance claim and disaster assistance.

If a structure that has received a Section 1316 declaration is made compliant with the community's floodplain management ordinance, then the Section 1316 declaration can be rescinded by the community and flood insurance eligibility restored.