

This responds to your request that we review the FEMA resolution below.

Executive Summary

OSI's resolution is fine but we recommend adding a reference to the statutory and regulatory appeal rights of owners/leases of affected property as indicated in our redline version of the resolution below. We otherwise recommend that the Town follow the exact procedure outlined in the OSI guidance below and you should let us know if you have any questions.

Analysis

Seabrook has a Floodplain Regulation in the Town's Zoning Ordinance. Zoning Ordinance, § 24. Section 24.120 identifies the affected land areas, which are defined as "all the lands designated as special flood hazard areas by [FEMA] in its Flood Insurance Study for Rockingham County," dated May 17, 2005 "or as amended." RSA 674:57 sets forth the process for amending flood insurance rate maps and states: "[a]mendments to the flood insurance rate maps shall apply to local floodplain ordinances upon their adoption by resolution of the local governing body . . . and shall require no further action by the local legislative body." RSA 674:57. However, adversely affected property owners may appeal flood map amendments pursuant to 44 CFR § 67.5. A read of that federal regulation does not reveal a clear indication of what the actual appeal rights are, but it appears that the only grounds for appeal are a scientifically or technically incorrect elevation. 44 CFR § 67.6.

Therefore, under the law, Seabrook's Select Board (the governing body) can amend the flood insurance rate maps by resolution. Even though this resolution requires amending the Zoning Ordinance to reference the amended flood insurance rate maps, no action is required by the local legislative body pursuant to RSA 674:57.

NH OSI correctly identifies the standard and provides an outline for a Select Board to adopt a resolution amending the flood insurance rate maps. The proposed resolution only amends the Zoning Ordinance to change the reference from the 2005 FEMA Flood Insurance Study and Rate Maps to the 2021 Flood Insurance Study and Rate Maps. Therefore, the proposed resolution appears to comply with the limited authority set forth in RSA 674:57.

However, we suggest making a minor addition to the resolution that makes it clear to affected parties that there is a right of appeal. This minor addition should help avoid any due process challenges down the road, particularly given the unwieldy appeal procedure in 44 CFR § 67.5. Our propose resolution is as follows:

Pursuant to RSA 674:57, by resolution of the Board of Selectmen, all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Rockingham, NH" dated January 29, 2021, together with the associated Flood Insurance Rate Maps, dated January 29, 2021, are declared to be part of the Town of Seabrook Zoning Ordinance and are hereby incorporated by reference. **Owners and lessees of affected real property may appeal the map amendment under 44 CFR § 67.5.**