

**STATE OF WEST VIRGINIA, COUNTY OF MARSHALL, CITY OF MOUNDSVILLE,
MAY 19, 2015**

The Council of the City of Moundsville met in special session in the Council Chambers on May 19, 2015 at 6:00 p.m.

Meeting was called to order by Mayor David Wood.

City Clerk Hewitt called the roll and the following councilpersons were in attendance: DeWitt, D. Haynes, P. Haynes, Hendershot, Saunders and Mayor Wood. Absent: Simms. Also present: City Manager Deanna J. Hess, Police Chief Mitchell, City Clerk Sondra Hewitt and Attorney Thomas White.

The Special Council Meeting was called for the following purpose:

1. Discussion of Appeal by Jim Kudlak Concerning Variance to Floodplan Ordinance Pertaining to Electrical Service at 12th Street Property.

NEW BUSINESS:

Discussion of Appeal by Jim Kudlak Concerning Variance to Floodplan Ordinance Pertaining to Electrical Service at 12th Street Property.

Attorney White announced that he will begin the appeal hearing by asking the Building Inspector questions then allow Mr. Kudlak to ask the Building Inspector questions. Before questioning, Councilperson Hendershot asked Attorney White under which section of the code will council be following 1755.08 or 1755.10. After looking over the appeal section of the code, Attorney White noted that council will follow 1755.10.

Joe Richmond introduced himself as the Moundsville Building Inspector, employed as such for 3 years, also the Floodplain Administrator for the City of Moundsville and is familiar with the State and Federal Floodplain Guidelines. When asked by Attorney White if Mr. Kudlak applied for a permit to put something in a flood zone, Mr. Richmond said he did not receive application from Mr. Kudlak but a phone call asking him to sign off on the service so AEP could connect electric in October, 2014. Mr. Richmond informed the electrician that he found the property to be in a flood zone and special requirements had to be followed. One being, the building having to be built 18 inches above the flood elevation. The building in question is a temporary office trailer needed electrical service.

Attorney White asked Mr. Richmond what part of the floodplain ordinance did this violate? Mr. Richmond quoted from the code section 1755.05 Criteria for Building and Site Plan Approval. (a) General. Permits are required in order to determine whether all new construction or substantial improvements are: (1) Located in an identified Floodplain or Floodway & (5) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and

other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Also 1755.06 Specific Requirements. (3) (6) Machinery, electric devices or appliances, and all utilities shall be located at least 18 inches above the Base Flood Elevation. Since Mr. Kudlak was not in compliance with the Floodplain Regulations, Mr. Richmond did not issue a permit nor did he sign off on electric service for AEP.

Attorney White said that given all the information provided a certain entity is not cooperating. Mr. Richmond agreed saying that American Electric Power (AEP) will not follow the city ordinance and connect electric service to any structure following the Floodplain ordinance nor does the city have the authority to force AEP to connect power to these areas.

Attorney White noted that a variance could allow Mr. Kudlak to be in compliance with the code, however, Mr. Richmond said due to past floodplain variances, the City of Moundsville is very close to being revoked from FEMA Flood Insurance Program. Attorney White reiterated Mr. Richmond's statement saying if the City of Moundsville would allow Mr. Kudlak violate the ordinance and put the service below the floodplain then citizens of Moundsville's flood insurance will increase possibly 100%.

Mr. Kudlak asked Mr. Richmond, where, specifically does it say in the ordinance the service has to be above the floodplain? Mr. Richmond noted code section 1755.05 Criteria for Building and Site Plan Approval. (5) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. Also 1755.06 Specific Requirements. (3) B (6) Machinery, electric devices or appliances, and all utilities shall be located at least 18 inches above the Base Flood Elevation. And (10) Utility and Facility Requirements. (C) All other new or replacement public and/or private utilities and facilities shall be located and constructed to minimize or eliminate flood damage.

Councilperson Saunders asked if Mr. Kudlak is the only one having this type of issue? Mr. Richmond said he was not, there are several individuals with this problem. Mr. Richmond said this ordinance has been in effect since 1980 and some services were not in compliance but approved.

Mr. Kudlak said everything that Mr. Richmond is referring to falls under Structures and Appurtenant Structures. The ordinance handles RV's, Recreational Vehicles and Manufactured Homes completely different completely separate.

Attorney White, referring to 1755.06 C (4) (C) Recreational Vehicle Placement. Recreational vehicles to be placed within any floodplain area shall either: (C) Be installed in accordance with the Manufactured Home Placement requirements and all other flood reduction requirements contained in this article. Mr. White then referring to 1755.06 (2) (1) Manufactured Home Placement. Certain unique characteristics of manufactured homes installed in flood hazard

areas pose an elevated risk of substantial damage to property. Thus: The lowest floor, ductwork and utilities including HVAC/heat pump shall be elevated 18 inches above the Base Flood Elevation.

Mr. Kudlak strongly disagrees with Attorney White and Mr. Richmond saying that he is not violating the ordinance. He went on to say he has 20 meters on his property that were approved. He also made comment to former Building Inspectors who upset AEP employees therefore, prohibiting those employees to climb platforms installed in floodplain areas.

Councilperson DeWitt asked Mr. Richmond if there was an issue at one time with the Marshall County Fairgrounds property? Mr. Richmond said all their electric comes into one or two areas and they can be disconnected from one place and is above base flood elevation. Mr. Kudlak disagreed saying it is not above base flood elevation and nothing in the ordinance says if it all comes into one place that it can be disconnected.

Councilperson Hendershot said he looked up the definition of appurtenant structure, “structure means more than a pole with a meter on it.” He doesn’t feel that section applies. Attorney White said appurtenant structure probably means a building but it’s the service to that structure. It’s either for appurtenant structure or a main structure and either way it has be 18 inches above the base flood elevation.

Councilperson Hendershot said he would like council to find a swifter answer to the correct the problem and possibly force AEP to follow City of Moundsville ordinance.

Attorney White encouraged council to make a decision on the Mr. Kudlak’s appeal at this time. Councilperson DeWitt moved to deny the appeal, seconded by Councilperson D. Haynes. 5 yeas 1 nay. Hendershot voting nay. Motion for appeal was denied.

Councilperson DeWitt moved to adjourn, seconded by Councilperson D. Haynes. Motion carried unanimously.

Meeting adjourned at 6:45 p.m.

Sondra J Hewitt, City Clerk

David Wood, Mayor