

**ELKINS COMMON COUNCIL**  
**SERVING AS APPELLATE BOARD**  
**UNDER FLOOD PLAIN ORDINANCE NO. 114**  
**January 5, 2012**

Elkins Common Council met in appellate board session in the council chamber of city hall at 6:30 p.m. Thursday, January 5, 2012. Present were Mayor Duke Talbott; Councilpersons: J. S. Bibey, N. E. Bross-Fregonara, V. T. Broughton, M. D. Cuonzo, T. Z. Hensil, C. G. Kinnison, C. L. Metheny, J. J. Sabatino, M. D. Scott, and R. A. Woolwine; Operations Manager/Acting City Clerk R. P. Pingley, City Treasurer L. D. Daniels-Smith; Police Chief Captain H. R. White, Jr., Fire Chief T. W. Meader; Executive Secretary L. M. Barrick taking minutes; and City Attorney G. S. Roberts.

**APPELLATE BOARD**

Operations Manager Robert Pingley outlined the situation to the Council. On October 3, 2011, Mrs. Hebb applied for a building permit to construct an addition to her home at 205 White Oak Lane. Mr. Pingley used a state provided website to find out if the property is in a flood plain (FEMA accepted site). It was determined that the property is indeed in a floodplain. Elkins City Council accepted Flood Plain Ordinance 114 on June 24, 2010. This ordinance states that the structure must be 2' above the flood plain. The ordinance also states that if the addition on the structure constitutes 50% or more of the dwelling, the entire structure must be raised if it is in a flood plain.

City Attorney Geraldine Roberts addressed Council in regard to the appeal. She told them that prior to 1985 the property was not in a flood plain.

Ms. Allician Hebb addressed Council. She said that she purchased the property in September 2011. The bank said that she needed fire and flood insurance. The insurance company said that she does not need flood insurance. She said that she can keep the addition value below 50% of the value of her home. She said that she has spoken to many of her neighbors and they are not aware that they are living in a flood zone. Ms. Hebb's family wants to stay in their home and build on an addition to make room for their grandchildren.

There is a question of liability to the City in the event of approval of a permit in a floodplain. The City was required by FEMA to adopt an ordinance. Ms. Hebb stated that she is willing to buy flood insurance to get her permit approved. If the City were to grant a variance it could have repercussions for others in the neighborhood by raising their flood insurance premiums by \$25.00 on the \$100 per Attorney Roberts. Councilwoman Cuonzo asked Ms. Hebb to contact her insurance company about the availability of flood insurance for her property.

Councilman Hensil recommended that the Operations Manager Bob Pingley and the City Attorney Geraldine Roberts contact FEMA to get answers to some questions prior to making any decisions.

Mayor Talbott recessed hearing until Council gets information from Attorney Roberts and Operations Manager Pingley to get answers to questions from F.E.M.A.

The meeting was recessed at 7:30 p.m.

**Meeting Reconvened January 19, 2012 at 6:32 p.m.**

Elkins Common Council met in appellate board session in the council chamber of city hall at 6:32 p.m. Thursday, January 19, 2012. Present were Mayor Duke Talbott; Councilpersons: J. S. Bibey, N. E. Bross-Fregonara, V. T. Broughton, M. D. Cuonzo, T. Z. Hensil, C. G. Kinnison, C. L. Metheny, J. J. Sabatino, M. D. Scott, and R. A. Woolwine; Operations Manager/Acting City Clerk R. P. Pingley, Deputy City Treasurer J. R. Chenoweth; Executive Secretary L. M. Barrick taking minutes; and City Attorney G. S. Roberts. Treasurer L. D. Daniels-Smith, Police Chief Captain H. R. White, Jr., and Fire Chief T. W. Meader were absent.

Mr. Kevin L. Sneed, West Virginia Division of Homeland Security and Emergency Management, State Floodplain Management Program Coordinator attended the meeting. He introduced himself basically as a technical advisor to keep citizens safe. He noted that Bob Pingley has had training to do with floodplain management. He also stressed the importance of having an elevation certificate of a property in a flood zone and noted that if more than 50% of the value of the structure has substantial improvement than the entire structure must be raised to be in compliance with the FEMA rules and regulations. He noted that a first step in living in a floodplain

would be to obtain an elevation certificate. All homes should be elevated 2’ above the flood plain. If a variance would be granted by the City of Elkins, it could cost every taxpayer in Elkins \$500/year in flood insurance and could also cause Elkins to lose good standing with the flood insurance program. If a property is in the floodplain, the only way that it could come out of the floodplain is if data from engineers proves that it is truly not in the floodplain. FEMA estimates many elevations instead of actually surveying them due to cost. Liability to the City—The City could be held liable for not requiring a citizen to build above the base flood level. If an existing structure is raised 2’ above the floodplain, it would be high enough to be eligible for flood insurance. Variances are frowned upon by FEMA.

Ms. Hebb said that her addition can be build for much less than 50% of market value due to free labor, free materials, etc.

City Attorney Geraldine Roberts addressed this 50% rule. She said that market value is different than actual cost. The market value would include all of the actual improvements not just those paid by cash.

Also, any lender would require an elevation certificate to be above the base flood elevation.

Cm. Scott, seconded by Cw. Cuonzo **MOVED COUNCIL CUT OFF DEBATE AND VOTE ON THE APPEAL.** The motion to end debate carried.

A roll call vote was requested. (Note: A Yes vote grants the variance request; a No vote denies the variance request)

Bibey	No
Bross-Fregonara	No
Broughton	No
Cuonzo	No
Hensil	No
Kinnison	No
Metheny	Yes
Sabatino	No
Scott	No
Woolwine	No

Mayor Duke Talbott noted that the Variance is denied. The meeting was adjourned at 7:20 p.m.