

IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA

EQT PRODUCTION COMPANY,
a Pennsylvania Corporation,

CASE NO. 12-C-17

Petitioner/Plaintiff,

vs.

DODDRIDGE COUNTY COMMISSION,

Respondent/Defendant,

vs.

JOYE HUFF, as trustee of the Randy E.
Huff Decedent's Trust B, WILLIAM LEE
HUFF, JAMES FOSTER, JENNIE FOSTER,

Respondents/Intervenors.

ORDER

Upon mature consideration and upon careful consideration of the material before the Court and the arguments of counsel, the Amended Motion for Summary Judgment of the Intervenors, Huff, and EQT Production Company's Motion for Summary Judgment are hereby DENIED. Furthermore, plaintiff's Motion for Injunction is hereby denied.

In support of this ruling, the Court FINDS that:

1. The Doddridge County Flood Plain Ordinance is in violation of the West Virginia Constitution to the extent that the Ordinance fails to provide Due Process to surface and

Dec. 17. 2012 10:14AM

No. 5255 P. 3

adjoining landowners potentially affected by the development for which EQT Production Company seeks a permit.

2. To the extent that the Ordinance addresses surface owners who desire to construct floodplain compliant structures within relevant FEMA requirements, the Ordinance is constitutional inasmuch as it appropriately advances a legitimate public interest and is an appropriate exercise of governmental authority and power.
3. In order to comply with standard requirements of due process afforded property owners under the West Virginia Constitution the subject Ordinance when being applied under circumstances involving the request for a permit which potentially affects surface owners who are situate within or adjoining the subject floodplain must afford notice and an opportunity to be heard upon the requested permit to this class of property owners.
4. Without such notice and opportunity to be heard being afforded to this class of property owners, Plaintiff would NOT be entitled to the relief prayed for in the form of an injunction requiring the issuance of a permit for development within the floodplain, due to the subject Ordinance's failure to provide such notice, which failure

cannot be cured by the happenstance discovery and intervention of such property owners.

5. In the absence of a clear right to the relief sought in these proceedings, being one of the most harsh and extraordinary remedies recognized, a mandatory injunction cannot be granted by this Court. Plaintiff has no clear right to the permit notwithstanding plaintiff's compliance with the subject ordinance. Compliance with an unconstitutional ordinance is insufficient to grant plaintiff such right since the Ordinance is constitutionally deficient. *Lamp v. Locke*, 89 W.Va. 138, 108 S.E. 889, (1921), and its progeny.
6. Given the violation of Due Process Rights of the class of individual property owners affected by these proceedings and the circumstances of the parties, the balance of equities does not favor the Plaintiff as the moving party and it would be totally inequitable to award the requested permit under these proceedings in their current form.
7. Therefore, the Plaintiff's Request for Injunctive Relief must be **DENIED** as a matter of law.
8. There is no necessity to proceed with the taking of evidence on the matter, which factual matters are rendered moot inasmuch as none of the proceedings before the Appeal Board in the form of the Doddridge County Commission or the

- Flood Plain Administrator provided due process to constitutionally necessary parties to those proceedings.
9. The Court has no jurisdiction, as previously ruled, to hear an Appeal and has no jurisdiction to make a determination on the merits of whether a permit should issue and furthermore has no jurisdiction to issue such a permit under the Flood Plain Ordinance. To award a permit or recognize a permit previously awarded then later revoked would be improper, based upon the unconstitutionality of the Ordinance.

The plaintiff's exceptions and objections to all adverse rulings by the Court are hereby reserved.

The Clerk of this Court is directed to submit a true and correct copy of this Order to:

EQT PRODUCTION COMPANY
David K. Hendrickson, Esq.
Stephen E. Hastings, Esq.
Hendrickson & Long, PLLC
P.O. Box 11070
Charleston, WV 25339.

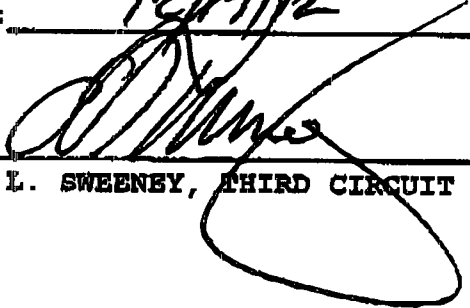
DODDRIDGE COUNTY COMMISSION
Donald J. Tennant, Esq.
Tennant Law Office
38 Fifteenth Street, Suite 100
Wheeling, WV 26003

JOYE HUFF, as Trustee for the Randy E. Huff Decedent's Trust B,
and **WILLIAM LEE HUFF**
David T. Richardson, Esq.
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826 Orange Ave, #546

Coronado, CA 92118

JAMES H. FOSTER and JENNIE FOSTER

Bradley W. Stephens, Esq.
Stephens Law Office, PLLC
#518 Monongahela Building
235 High Street
Morgantown, WV 26505

ENTERED: 12/17/12

TIMOTHY L. SWEENEY, THIRD CIRCUIT JUDGE

I hereby certify that the annexed instrument is a true and correct copy of the original on file in this office.
Attest: DWIGHT E. MOORE
Circuit Court Doddridge County of West Virginia


Clerk

ENTERED IN Civil BOOK
No. 18 AT PAGE 536
THIS 17th DAY OF December,
YEAR 2012 DWIGHT E. MOORE
CIRCUIT CLERK