First Steps to Correcting Violations

Things aren’t always going to be black and white.
Thank you for shopping at Shed World!
What Gives You the Right!

- Kanas Statute Annotated 12-766, 12-767 and 12-768 (floodplains)
- Kansas Administrative Regulations 5-44-1 through 5-44-7
- Kansas Statute Annotated 12-1751 (dangerous structures)
- Your locally adopted floodplain regulations.
- Sanitation codes and Kansas Department of Health and Environment bulletin 4-2
- Adopted minimum housing codes
- K.S.A. 40-3901 (insurance proceeds)
- K.S.A. 12-1,115 (abatement and special assessment)
40-3901. Cities; payment of proceeds of insurance policies; procedure; release of proceeds. (a) The governing body of any city is hereby authorized to establish, by ordinance, a procedure for the payment of not to exceed 15% of the proceeds of any insurance policy based upon a covered claim payment made for damage or loss to a building or other structure. The ordinance shall apply only to a covered claim payment which is in excess of 75% of the face value of the policy covering a building or other insured structure.

(b) The insurer first shall pay all amounts due the holder of a first real estate mortgage against the building or other structure pursuant to the terms of the policy and endorsements thereto and then shall withhold from the covered claim payment a sum not to exceed the amount authorized pursuant to subsection (a) and shall pay such moneys to the city to deposit into an interest-bearing account, unless the city has issued a certificate pursuant to K.S.A. 40-3906, and amendments thereto.

(c) The city shall release the insured’s proceeds and any interest which has accrued on such proceeds received under subsection (b) within 45 days after receipt of such moneys, unless the city has instituted legal proceedings under the provisions of K.S.A. 12-1752, and amendments thereto. If the city has proceeded under the provisions of K.S.A. 12-1752, and amendments thereto, all moneys in excess of that necessary to comply with the provisions of K.S.A. 12-1750 et seq., and amendments thereto, for the removal of the building or structure, less salvage value, shall be paid to the insured.

History: L. 1982, ch. 192, § 2; L. 1997, ch. 102, § 2; L. 2016, ch. 72, § 2; July 1.
When does enforcement start?

a. When you first become aware of the violation?

b. When an anonymous complaint comes in to your office?

c. When you visit the property?

d. When the State NFIP Coordinator comes to town?
What is key to enforcement?
Do you look at GIS data, aerial photos or make maps before you visit a property?
What about location maps or FIRM?
Review files or building permit records?
Take lots and lots of photos.

What are good qualities of an establishing shot?
Where do you stand when you are taking the picture?

Concerning unreasonable searches.

The 4th Amendment to the Constitution.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
Now go back to this shot.

Then ask about the shed.
How will you take the photos?
A potential 4th Amendment issue.

Shed is behind a fence. You can see part of it.
Can you raise your camera above your head?

Can you fly a drone over the backyard?
Is This a Violation?
Is This a Violation?
Any development without all the required Permits.
WHAT DO WE DO NOW?

Blame it on Steve...
Stop Work Order. Use when the work is in progress and there isn’t a permit or conditions of permit aren’t being followed.
A stop work order should be issued if construction is taking place.

The violator will need to be notified of the violation. Suggest using certified mail followed up with a duplicate mailing affidavit.
AFFIDAVIT OF MAILING

STATE OF KANSAS )
COUNTY OF "NAME" ) ss:

____Name of Floodplain Mgr____, being of lawful age, being first duly sworn
upon oath, deposes and say:

That on the ____day of month, year____, affiant deposited a copy of the attached
notifications in the United States mail, postage prepaid, and properly addressed to the following
persons:

Name
Address
City, KS zip

Name
Address
City, KS zip

Further affiant sayeth naught.

__________________________________________
Name and title printed here

Subscribed and sworn to before me this ____day of month, year____.

__________________________________________
Notary Public
Violation Letter or Letter of Allegation

• The location and nature of the alleged violation should be specified.

• Reference should be made to the floodplain ordinance/resolution and the specific sections that have been violated.

• Violator should be informed of possible fines and other possible actions.

• Violator should be informed of the desired response or action to be taken.

• Try not to make letter too technical. Don’t use acronyms.
Where do you send that letter?

• Send to owner of record of the property. Check with Register of Deeds.

• Can also request a Limited Certificate of Title through your attorney in some States. This document will cover history of ownership and any liens on the property?

• Why not just send the letter to the person who is living there?

• Should lien holders be copied on violation letters?

• What about tenants?
Violation Letter is like a BLT

- Opening greeting (bread on top).
- Explain violation (first bacon layer).
- Citation (lettuce).
- Request meeting (middle bread slice).
- Explain consequences (second bacon layer).
- Rights to appeal (mayonnaise).
- Deadline date (tomato slices).
- Conclusion (bottom slice of bread).
Discussion

- Opening greeting (bread on top).
- Explain violation (first bacon layer).
- Citation (lettuce).
- Request meeting (middle bread slice).
- Explain consequences (second bacon layer).
- Deadline date (tomato slices).
- Conclusion (bottom slice of bread).

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August 23, 2016

Re: Floodplain Development
To Whom It May Concern:

As of now, you are in VIOLATION of [redacted] County Floodplain Management Regulations. To be able to continue the work on your property at [redacted], parcel I.D. # [redacted], you will need to obtain permitting or a determination from several different agencies.

Violation of the provisions of Resolution #25-10 or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this Resolution or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $1,000.00, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent [redacted] County, KS or other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

If you feel that your property is not in a floodplain then you will need to get a Letter of Map Amendment (LOMA) from FEMA. To do this we will need an Elevation Certificate.

If you would like to read the Floodplain Regulations about activities in the floodplain, you can find them at the Floodplain Management Office. The office is in room #101 at the Lyon County Courthouse.

Call the office if you have questions about how this process works or what could happen if the property remains in violation. Please do so within **30 DAYS** of the date on this letter.

If you feel you have received this letter in error, please notify this office.

Respectfully,

[Redacted]

cc: file, Kansas Department of Water Resources, State NFIP Coordinator
All notices to the violator that request a response or action by the recipient should include a “response due” date.
• Look at the violations section of your floodplain ordinance. See what provisions are set out in the ordinance for pursuing violations.

• What procedures are followed for violations of other types of local regulations?
Fifth and Fourteenth Amendment contain a due process language.
Violators must be given “due process” – a reasonable opportunity to respond or to take action.

The community should send a minimum of two written notices (which include a response/action due date) before proceeding on to more harsh actions such as fines or litigation.

Failing to inform violator of the right to an appeal may be considered as taking away from their right to “due process”.
Copy letters to your own State NFIP Coordinator’s Office.

WANTED

REWARD

FOR THE HIGH CRIME OF FLOODPLAIN MANAGEMENT
Meet with property owner.

- Be professional
- Be on time
- Body language
- Blame game
- Buy in to solution
- Explain what needs to happen very specifically

My taxes pay your salary!

I’m gonna have your job!

I know the Mayor!
Reflective Listening.
Be willing to admit a mistake.

"More people would learn from their mistakes if they weren't so busy denying them."

TO ADMIT THAT YOU WERE WRONG IS TO DECLARE THAT YOU ARE WISER NOW THAN YOU WERE BEFORE.

Mistakes are always forgivable, if one has the courage to admit them.

A great man makes no mistakes. A greater man admits them.
Questions?

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