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**TO: City of Fayetteville Citizens**

**FROM: Kit Williams, City Attorney**

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**RE: Rezoning Issues**

**HISTORY OF ZONING IN FAYETTEVILLE**

Some of the most important issues a City Council faces are rezoning requests. The City Council is given great deference by the Courts when determining the best zoning district for the property being considered. I believe zoning in Fayetteville began around 1950. A city-wide rezoning passed in the early 1970s.

After the Downtown Master Plan was adopted, a large area of downtown was not only rezoned, but rezoned into newly created zones that allow mixed use of varying intensity. The Walker Park Neighborhood rezoning followed the acceptance of the Walker Park Neighborhood Master Plan. The City used its legislative power to rezone property even against the wish of the owner because the neighborhood made convincing arguments that a different zoning was more desirable because it was more compatible with the neighborhood and the master plan. Although the City was sued in that case, I filed a Motion For Summary Judgment. The property owner basically continued his case indefinitely rather than allowing the Court to consider granting us Summary Judgment. The City Council's decision to rezone property has not been reversed in Court for over twenty years.

The City Council has much more discretion when considering a rezoning than when a development proposal (Large Scale Development or Preliminary Plat) would be appealed to the City Council. If the LSD or

Preliminary Plat meets Fayetteville's Unified Development Code's minimum standards, "it is arbitrary as a matter of law to deny approval of a plat that meets those standards." *Richardson v. City of Little Rock Planning Commission*, 295 Ark. 9, 747 S.W. 2d 116, 117 (1988). Thus, if the City Council wishes to exercise its discretion about what will be built on land proposed for rezoning, the City Council should exercise its discretion at the time of rezoning, not when land is proposed for development.

## ZONING PROCEDURE

One of the most frequent decisions an alderman is required to make is to determine whether a rezoning request should be granted. These requests begin with our Planning Department which will analyze the request and make recommendations based upon our long range, citywide development plan (the 2030 Plan) and other zoning considerations to the Planning Commission. The Planning Commission will then conduct a public hearing on the proposed rezoning and make its recommendation for or against the rezoning which then comes to the City Council.

Since zonings are considered legislation, they must be done by ordinance which requires three "readings" at three separate meetings. City Council members may move to "suspend the rules" to immediately go to the second or "third and final" readings. The motion to suspend the rules requires six votes to pass. Only the title of the ordinance need be read if the rules are suspended.

After the ordinance has been read for the third and final time and all discussion is concluded, the Mayor will ask the City Clerk to call the roll and each alderman will vote "yes" "no" or "abstain." Ordinances require five affirmative votes to pass. The Mayor may vote to pass an ordinance if only four Aldermen have voted for it because the Mayor's affirmative vote would be needed for passage of the ordinance. If the Mayor chooses not to vote at that time, the ordinance will not pass.

The City Council has substantial discretion in deciding whether or not to grant a rezoning request. However, once land is properly zoned for a proposed development, the Planning Commission and City Council may only

require that the developer abide by our development ordinances and not create a dangerous traffic hazard when building the project.

### ZONING CONSIDERATIONS

Probably the most important factor and the underlying reason to have zoning in the first place is to promote **COMPATIBILITY** among neighboring parcels. Even in our mixed use zones of the Downtown Master Plan and Planned Zoning Districts, compatibility with surrounding areas is always an important consideration.

When the City Council is considering whether or not to approve a rezoning request, the City Planning Division presents useful information from various city departments that cover issues included with the City's Long Range Land Use Plan. This document was the result of public hearings and input from citizens, staff, commissioners and council members. However, "A land use plan is meant to be just that - a plan. It is not legally binding on the city." *Taylor v. City of Little Rock*, 583 S.W. 2d 72, 73 (1979).

**State Statutes** authorize cities to prepare zoning and development plans and list nine purposes or goals that these plans may promote:

- "1. Efficiency and economy in the process of development;
  2. The appropriate and best use of land;
  3. Convenience of traffic and circulation of people and goods;
  4. Safety from fire and other dangers;
  5. Adequate light and air in the use and occupancy of buildings;
  6. Healthful and convenient distribution of population;
  7. Good civic design and arrangement;
  8. Adequate public utilities and facilities; and
  9. Wise and efficient expenditure of funds."
- A.C.A. §14-56-403 (b).

The appellate courts of Arkansas have recognized and approved many different factors that a City Council can consider when a proposed rezoning is contested.

1. **Public Opposition**

“Opposition by a large majority of the citizens in the neighborhood”. *Thomas Petroleum v. West Helena* (1992).

“The Opinion of local residents, **when it reflects logical and reasonable concerns ....**” *City of Lowell v. M & N Mobile Home Park* (1996).

“Some of the residents (of the area) objected ....” *Tanner v. City of Green Forest* (1990).

2. **Traffic**

“Increased traffic on limited roads”. *City of Lowell v. M & N Mobile Home Park* (1996).

“Increased risk of traffic accidents”. *Thomas Petroleum v. West Helena* (1992).

3. **Noise**

*City of Lowell v. M & N Mobile Home Park* (1996).

4. **Decreased value of adjoining land**

*City of Lowell v. M & N Mobile Home Park* (1996).

5. **Potential for criminal activity**

*Thomas Petroleum v. West Helena* (1992).

6. **Increased litter**

*Thomas Petroleum v. West Helena* (1992).

7. **Strain on Sewage service**

*Tanner v. City of Green Forest* (1990).

8. **Spot zoning and compatibility**

“The need to maintain consistent zoning area, and not to set a precedent of spot zoning .... (T)he property was entirely surrounded by a residential area, and that the residents objected .... ” *Thomas Petroleum v. West Helena*, 310 Ark. 682, 839 S.W. 2d 523, 525 (1992).