



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Alderman Rhonda Adams
Alderman Mark Kinion
Alderman Justin Tennant

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', written over a horizontal line.

DATE: December 15, 2010

RE: Approval or Rejection Criteria for Planned Zoning Districts

There have been public calls in the past for the City Council to substitute “common sense” or new and unsanctioned economic or past performance tests for the eight approval/rejection criteria enacted by the City Council into the Unified Development Code. The Arkansas Supreme Court has repeatedly ruled such substitution illegal.

“(N)or does a city have to create a zoning ordinance or a land use plan or adopt planned use districts or planned commercial districts, but once it has done so **it must follow the ordinance until it is repealed or altered.**” City of Little Rock v. Pfeifer, 318 Ark. 679, 887 S.W. 2d 296, 298 (1994). (emphasis added)

The Arkansas Supreme Court determined that the Little Rock Board of Directors had acted arbitrarily, capriciously and unreasonably in that rezoning case. The Arkansas Supreme Court has also overturned Fort Smith when it failed to follow its own, enacted development ordinances.

“A city simply cannot pass procedural ordinances they expect to be followed by their residents and then conveniently ignore them themselves. **A legislative body must substantially comply with its own procedural policies.**” Potocki v. City of Fort Smith, 279 Ark. 19, 648 S.W. 2d 462, 464 (1983). (emphasis added)

I have included herein a copy of §166.06(E) of the Unified Development Code covering the eight Approval or Rejection Criteria For Planned Zoning Districts. These criteria do not include a consideration of the developer's previous projects nor any requirement that the developer prove the financial underpinning or anticipated profitability of a project.

A planned zoning district must be analyzed and approved or rejected based **only** upon the eight criteria passed by this City Council when the City Council enacted the Planned Zoning District ordinance. If the City Council ignores its own ordinance and decides to reject a PZD because of what someone believes is just good old "common sense," the Arkansas Supreme Court would likely determine the City Council has acted arbitrarily and capriciously.

"When a subdivision ordinance specifies minimum standards to which a preliminary plat must conform, **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. 189, 747 S.W. 2d 116, 117 (1988). (emphasis added)

Citizens, who cannot be expected to understand all your legal responsibilities, have through the years called for the City Council to support or reject a proposed development for reasons not found in your Unified Development Code. Throughout my years as City Attorney, I have provided the City Council with numerous legal memos consistently stressing the legal requirement **that every development proposal must be judged only upon the considerations the City Council adopted and enacted into law.** The PZD must be evaluated upon these eight approval/rejection criteria and not by unsanctioned "common sense" or "economic viability" opinions.

Below are the eight approval/rejection criteria for PZD's {§166.06(E) of the UDC} that you should apply in every PZD proposal.

"(E) Approval or Rejection Criteria for Planned Zoning Districts

"The following criteria shall be considered by the Planning Commission and City Council in the review of a planned zoning district application based on the proposed master development plan:

- “(1) Whether the application is in compliance with the requirements of the UDC and the Comprehensive Land Use Plan;
- “(2) Whether the application is in compliance with all applicable statutory provisions;
- “(3) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services;
- “(4) Whether the proposed rezoning is compatible with the surrounding land uses;
- “(5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;
- “(6) Whether the intended land use would create traffic congestion or burden the existing road network;
- “(7) Whether the planned development provides for unified development control under a unified plan;
- “(8) Whether any other recognized zoning consideration would be violated in this PZD.”