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**TO: Alderman Rhonda Adams
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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: Zoning Considerations

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 2025 Plan) 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, "Shall the ordinance pass?" The City Clerk will 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.

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.**

Occasionally an alderman will appeal an approved Large Scale Development from the Planning Commission or (more often) a developer turned down by the Planning Commission will appeal his rejection to the City Council. If a project follows our ordinances, and does not create a traffic hazard, it must be approved even if the public and aldermen do not think it is a good idea. Thus, **it is with zoning and rezoning (rather than rejection of a Large Scale Development) that a City Council has more power and discretion to control the type of development allowed in a particular area.**

ZONING CONSIDERATIONS

When a rezoning request is presented to the Planning Commission or City Council, our City Planning Department presents several Findings which cover issues specifically included within our long-range planning document, the City's 2025 Plan. This document was the result of many public hearings and much 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).

Finally, the Appellate Courts of Arkansas have recognized and approved many different factors that a Planning Commission or 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).

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**

“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).

“Spot zoning has been defined by several authorities. It has been said that:

‘Spot zoning, by definition, is invalid because it amounts to an arbitrary, capricious and unreasonable treatment of a limited area within a particular district. As such, it departs from the comprehensive treatment or privileges not in harmony with the other use classifications in the area and without any apparent circumstances which call for different treatment. Spot zoning almost invariably involves a single parcel or at least a limited area.’ R. Wright and S. Webber, *Land Use* (1978).” Riddell v. City of Brinkley, 612 S.W. 2d 116, 117 (1981).

“(S)pot zoning includes zoning one lot in a manner entirely different from the surrounding area “ Smith v. City of Little Rock, 279 Ark. 4, 648 S.W. 2d 454, 457 (1983).

Finally, a proponent of a rezoning will often argue that he or she is entitled to a rezoning in order to put the property to its “**highest and best use**” from a monetary viewpoint. The benefit to the owner of a proposed rezoning may certainly be considered, “(h)owever, we have held that **rezoning is not justified solely on the ground that it is necessary to put a particular tract to its most remunerative use.**” Tanner v. City of Green Forest, 302 Ark. 170, 788 S.W. 2d 727, 729 (1990). (emphasis added).