

MEMORANDUM

TO: MAYOR
CITY COUNCIL
PLANNING COMMISSION

FROM: JASON B. KELLEY, STAFF ATTORNEY



DATE: FEBRUARY 24, 2014

RE: CONSIDERATIONS CONCERNING ZONING

A common issue facing our Planning Commission and City Council is deciding whether to grant a rezoning request. In making this decision, it is necessary that no impermissible considerations are a part of the decision. How do you decide whether to rezone property, and if so, to what zone? There are several factors that the Planning Commission or City Council may take into account when deciding whether or not to rezone.

As an initial matter, the City's staff prepares a report and recommendation covering various facts and circumstances concerning the property in question. Included in this analysis is how the affected property is included in the City's master land use plan. The master land use plan is a document approved by resolution of the City Council, but it is not legally binding. "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 law authorizes cities to create zoning and development plans "in order to promote, in accordance with present and future needs, the safety, morals, order, convenience, prosperity, and general welfare of the citizens." Ark. Code Ann. § 14-56-403(a). Plans may provide, among other things, for

- Efficiency and economy in the process of development
- The appropriate and best use of land
- Convenience of traffic and circulation of people and goods
- Safety from fire and other dangers
- Adequate light and air in the use and occupancy of buildings
- Healthful and convenient distribution of population
- Good civic design and arrangement
- Adequate public utilities and facilities
- Wise and efficient expenditure of funds

Ark. Code Ann. § 14-56-403(b)(1) – (b)(9). Conformance of a rezoning request to the above-criteria and the master use plan as a whole are legitimate considerations when deciding on whether to grant a rezoning request.

Additionally, Arkansas courts have recognized and approved many factors a planning commission or city council may consider when deciding on a rezoning. These include:

--Public opposition and the opinion of local residents, when it reflects logical and reasonable concerns. Thomas Petroleum, Inc. v. West Helena, 310 Ark. 682 (1992) and City of Lowell v. M&N Mobile Home Park, 323 Ark. 332 (1996).

--Traffic, particularly increased traffic on limited roads or the increased risk of accidents. Id.

--Noise. City of Lowell v. M&N Mobile Home Park, 323 Ark. 332 (1996).

--Decreased value of adjoining land. Id.

--Potential for criminal activity. Thomas Petroleum, Inc. v. West Helena, 310 Ark. 682 (1992).

--Litter increase. Id.

--Increased strain/load on a sewage service. Tanner v. Green Forest, 302 Ark. 170 (1990).

--Avoiding Spot Zoning

“The need to maintain consistent zoning areas, and not to set a precedent of spot zoning.” Thomas Petroleum, Inc., 310 Ark. at 685. What is spot zoning? “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 invariable involves a single parcel or at least a limited area.” Riddell v. City of Brinkley, 272 Ark. 84, 87 (1981), quoting R. Wright & S. Webber, Land Use (1978). “[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

It is possible you will hear applicants make reference to the “highest and best use” of their land from a standpoint of maximizing a property’s economic value. You may consider economic benefit, but you are not bound by it. The courts have stated that “rezoning is not justified solely on the ground that it is necessary to put a particular tract to its most remunerative use.” Tanner, 302 Ark. at 174. In other words, economic benefit plus other factors may justify a rezoning, but economic benefit alone does not.

Failing to use legally permissible considerations would be deemed an arbitrary and capricious act exposing you and the City to legal liability for violating the due process constitutional rights of an applicant. It should go without saying that decisions based on personal animosity, retribution or general dislike would be arbitrary, capricious and illegal.

I hope this short memo provides guidance to you in your decision making on rezoning requests. I remain available to answer any specific questions which may arise during the course of any of your deliberations.