



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE CITY ATTORNEY

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TO: Mayor Jordan

CC: City Council
Don Marr, Chief of Staff
Garner Stoll, Development Services Director
Andrew Garner, City Planning Director

FROM: Kit Williams, City Attorney

Handwritten signature of Kit Williams

DATE: February 28, 2018

RE: Rezoning Applications from James Keenan

You asked whether the landowner's rezoning application/petition was sufficiently noncompliant with the Unified Development Code to require re-submittal before it could be approved by the City Council. The Rezoning Application states at the very top: "Please fill out this form completely, supplying all necessary information and documentation to support your request. Your application will not be placed on the Planning Commission agenda until this information is furnished." (emphasis in original)

Even though "Please" is used, the form of this sentence is a clear command: "fill out this form completely. . . ." It is therefore a requirement rather than a suggestion. This is further strengthened by the second italicized sentence denying placement "on the Planning Commission agenda until this information is furnished."

The short letter authored by David Jorgensen and supplied to me by Planning does not refer to many items or factors listed on page 3 of the application under the heading "A written description of this request addressing the following items:" Even with apparent defect in the rezoning application, the Planning Department unfortunately placed this on the Planning Commission Agenda which voted to forward it to the City Council with the recommendation to enact the rezoning requested.

Can the City Council now pass this property owner's rezoning request despite the incomplete application for rezoning? I do not believe so. I base this not only on the zoning application itself, but upon the real law governing rezoning requests by landowners, the Unified Development Code and specifically § 154.03 **Private Parties/Zoning Amendment**. The City Council enacted § 154.03 to require certain things to be done by a landowner to rezone their property.

"(A) *Petition*. Any private party. . . upon payment of the appropriate fee, shall submit to the Planning Commission a petition giving the following information:

- (1) Legal description of the property involved;
- (2) Zoning classification request for the property; and
- (3) Statement explaining why the proposed changes will **not conflict with the surrounding land uses.**"

The letter submitted with application certainly did not explain why the proposed change would not conflict with the surrounding uses (which were not mentioned in the letter).

§ 154.03 is **mandatory** ("shall submit") upon the petitioner (which is synonymous with applicant). Therefore, a proper rezoning petition or application was never submitted to the Planning Commission by the landowner which nullifies any consideration or vote concerning the rezoning petitions.

Can the City Council just ignore § 154.03's requirements and pass the rezoning ordinance anyway? No. Fayetteville must follow and obey its own procedural and zoning ordinances until they are repealed or altered.

"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, (1983). (emphasis added)

"(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)

## Recommendation

I recommend that this rezoning petition be sent back to the Planning Commission to be heard once the landowner has fully complied with § 154.03 (A) *Petition*. I also recommend that the Planning Department amend its application to fully comply with § 154.03 (A). If the Planning Department would like to suggest that any rezoning petitioner submit additional information such as the items found in (5) of the application to assist the Planning Department in making its recommendation for or against the rezoning, the application needs to be clear such additional information is not required. However, a "(s)tatement explaining why the proposed change will not conflict with the surrounding land uses," is clearly required.

Once the landowner's application (petition) complies with § 154.03 (A), both the Planning Commission and then the City Council can act on such rezoning request.