

**AGENDA REQUEST FORM**

**FOR: Council Meeting of July 21, 2020**

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**FROM: City Attorney Kit Williams**

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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

**AN ORDINANCE TO AMEND § 155.06 APPEALS FROM STAFF  
INTERPRETATIONS AND ACTIONS TO DIRECT MORE APPEALS TO THE  
PLANNING COMMISSION RATHER THAN TO THE CITY COUNCIL**

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**APPROVED FOR AGENDA:**

  
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City Attorney Kit Williams

July 2, 2020  
Date



## DEPARTMENTAL CORRESPONDENCE

OFFICE OF THE  
CITY ATTORNEY



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Jodi Batker  
Paralegal

TO: **Mayor Jordan**  
**City Council**

CC: **Susan Norton**, Chief of Staff  
**Garner Stoll**, Development Services Director  
**Jonathan Curth**, Development Manager

FROM: **Kit Williams**, City Attorney

DATE: **July 3, 2020**

RE: **Amendments to §155.06 Appeals for Staff Interpretation/Actions**

I am charged with administering and interpreting Chapter 155 of the *Unified Development Code*. After Council Member Teresa Turk requested an amendment of the number of Council Members necessary for an appeal of a Conditional Use from 3 down to 2, I examined other sections in this Chapter.

I noticed outdated titles: "Zoning and Development Administrator" which had been replaced with "Planning Director" years ago (but not in the U.D.C.) and has been changed again to "Development Review Manager." I also needed to change "Alderman" to "Council Member."

Beyond using the current correct titles, I noted some other amendments were needed. City Engineer Chris Brown and Development Services Director Garner Stoll agreed that vacations of right of way and easements had to always eventually be decided by the City Council and were usually very routine and uncontroversial. Therefore, I eliminated their (almost meaningless) route through the Planning Commission before getting to the City Council. This will also save applicants for vacations up to a month.

On the other hand, there were several appeals of staff interpretations that were supposed to go directly to the City Council that really should go to the Planning Commission. For example; "An interpretation or decision of the Zoning and Development Administrator regarding development matters, including subdivisions, large scale developments, parking and loading, and outdoor lighting" would skip the Planning Commission and go directly to the City Council. I am not sure why the Planning Commission was ever supposed to be skipped for "development matters." The same is true of the City Engineer's interpretation of "development matters." I thus rewrote this section to send most development matters' decisions to the Planning Commission.

Current law - highlighted changes

155.03

FAYETTEVILLE CODE OF ORDINANCES  
TITLE XV UNIFIED DEVELOPMENT CODE

**155.03 Stay**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

**155.04 Alderman Appeal On Behalf Of Resident**

An alderman may bring an appeal on behalf of any resident of the city a decision by the Planning Commission to approve or deny the requests as set forth below.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09)

**155.05 Appeals From Planning Commission Decisions**

(A) *Appeals to City Council.*

(1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests, in accordance with the procedures set forth in §155.02.

(a) Annexation

(b) Rezoning

(c) Planned Zoning District

— Part of zoning

(d) Subdivision (preliminary plat, final plat, concurrent plat, lot split)

(e) Large scale development → expanded

(f) Vacation of utility easement, access easement, public right-of-way

(g) Commercial Design Standards

— only as part of development plan  
only as part of development plan

(h) Tree Preservation Plan

(i) Variances and waivers of the UDC

out →

expanded, but appealed only as part of

(2) *Conditions of Approval.* An owner of record may appeal the conditions of approval determined by the Planning Commission for any of the requests listed in (A)(1).

final development plan

(3) *Conditional Use Request.* Three (3) aldermen, two (2) of whom must reside in the effected ward, may in unison appeal a decision by the Planning Commission approving or denying a conditional use request.

(B) All other decisions by the Planning Commission must be appealed to Circuit Court.

(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4334, 9-4-01; Ord. No. 4340, 10-2-01)

**155.06 Appeals From Staff Interpretations/Actions**

(A) *Appeals to City Council.* The following staff interpretations/actions may be appealed to the City Council by an owner of record of the property in question or an alderman on behalf of a resident of the city:

(1) **Zoning and Development Administrator.** → *appeals to Planning Commission*

- (a) *Design Overlay District requirements.* The decision of the **Zoning and Development Administrator** not to exempt property from the Design Overlay District requirements as allowed in §161.28(G).
- (b) *Development Matters.* An interpretation or decision of the **Zoning and Development Administrator** regarding development matters, including subdivisions, large scale developments, parking and loading, and outdoor lighting may appeal.

(2) *City Engineer.*

(a) *Stormwater, Drainage, and Erosion Control Requirements.* The decision of the City Engineer to issue a violation notice *or stop work order* related to these requirements.

(b) *Development Matters.* An interpretation or decision of the City Engineer regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems may appeal.

(c) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the City Council shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.

(d) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.

(3) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.

(4) *Impact Fee Administrator.* Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159 Fees.

(B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or an alderman on behalf of a resident of the city to the Board of Adjustment:

(1) **Zoning and Development Administrator—Zoning.** An interpretation or decision of the **Zoning and Development Administrator** regarding zoning matters may appeal.

(2) *Building Safety Division Director—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Division Director, made in the administration of Airport Zone, Chapter 165, may appeal.

(C) *Appeals to the Planning Commission.*

(1) Required Dedications and Improvements.

- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, development permit, or otherwise within 10 days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications and improvements meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."

(2) Administrative Approvals.

- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Zoning and Development Administrator regarding development matters that are approved administratively, as required by Chapter 166.02 (C) may appeal the decision to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
  - (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
  - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
  - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
  - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
  - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.

- (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
  - (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
  - (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.
- (D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.
- (Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162..03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No. 3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93, Ord. No. 3806, §1, 6-28-94; Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. No. 4652, 12-07-04; Ord. No. 5206, 12-16-08; Ord. No. 5296, 12-15-09; Ord. 5390, 3-1-11)

**155.07 Appeals To The Housing Board—Mobile Homes And Mobile Home Parks**

- (A) *Permit Denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.
  - (B) *Permit Suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.
  - (C) *Petition Deadline.* When no petition for hearing shall have been filed within ten (10) days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten (10) days.
- (Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Ex. A), 6-16-98)
- (Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04).

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE TO AMEND § 155.06 APPEALS FROM STAFF INTERPRETATIONS/ACTIONS TO DIRECT MORE APPEALS TO THE PLANNING COMMISSION RATHER THAN TO THE CITY COUNCIL**

**WHEREAS**, most appeals of staff interpretations of development issues should be directed first to the Planning Commission for review before a later appeal by the applicant or City Council Member can appeal the issue to the City Council; and

**WHEREAS**, a violation notice or stop work order issued by the City Engineer should continue to be appealed directly to the City Council because of the potential monetary impact of such notice or order; and

**WHEREAS**, an appeal of an impact fee decision by the Impact Fee Administrator should be included in the overall consideration of the rough proportionality of the impact of the development, but any recommendations by the Planning Commission to reduce any impact fees must be approved by the City Council. Reductions of other exactions do not need City Council approval unless properly appealed.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby amends § 155.06 **Appeals From Staff Interpretations/Actions** by repealing it in its entirety and enacting a replacement § 155.06 as attached as Exhibit A to this ordinance.

**PASSED and APPROVED** this 21st day of July, 2020.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**KARA PAXTON**, City Clerk/Treasurer



## 155.06 - Appeals From Staff Interpretations And Actions

### (A) *Appeals to City Council.*

(1) The City Engineer's decision to issue a violation notice or stop work order may be appealed to the City Council by an owner of record of the property in question or a council member on behalf of a resident of the city.

(2) The Development Review Manager's decision to deny a vacation of any public easement or right-of-way (whether constructed or not) or portion thereof may be appealed by the owner of record of the property.

### (B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or a council member on behalf of a resident of the city to the Board of Adjustment:

(1) *Development Review Manager—Zoning.* An interpretation or decision regarding zoning matters.

(2) *Building Safety Officer—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Officer, made in the administration of Airport Zone, Chapter 165.

### (C) *Appeals to the Planning Commission.*

#### (1) Development Review Manager's Required Dedications and Improvements.

(a) An owner or developer who is aggrieved by the Development Review Manager's interpretation of the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement (including impact fees), which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, large or small site improvement plans, subdivision, building permit, lot split, other development permit, or otherwise within 10 working days of the final development approval that included the disputed exactions. The appeal must be presented to the Planning Division in writing and state the grounds or reasons for the appeal.

(b) The Planning Commission shall determine after public hearing whether the required dedications, improvements, and fees meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."

(c) Any potential reduction of impact fees must be approved by the City Council.

#### (2) Administrative Approvals and interpretations by Development Review Manager

(a) A resident of the city or an owner/developer who is aggrieved by a decision of the Development Review Manager regarding development matters that are approved administratively {as required by Chapter 166.02(C)} may appeal the final development approval decision affected by this matter to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 working days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:

(i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.

(ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.



- (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
  - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
  - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
  - (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
  - (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.

(3) City Engineer and Flood Plain Administrator

- (a) *Development Matters.* An interpretation or decision of the City Engineer or Floodplain Administrator regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems.
- (b) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
- (c) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.

(4) Development Review Manager's Interpretation or Decision of other Development Matters.

An interpretation or decision of the Development Review Manager regarding development matters including subdivisions, large scale developments, parking and loading, outdoor lighting, compliance with applicable design standards, or any other development matters.

- (5) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.

(D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.



## DEPARTMENTAL CORRESPONDENCE

OFFICE OF THE  
CITY ATTORNEY



TO: **Mayor Jordan**  
**City Council**

**Kit Williams**  
*City Attorney*

CC: **Susan Norton**, Chief of Staff  
**Garner Stoll**, Development Services Director

**Blake Pennington**  
*Assistant City Attorney*

**Jodi Batker**  
*Paralegal*

FROM: **Kit Williams**, City Attorney

DATE: **July 20, 2020**

RE: **§155.06 Appeals from Staff Interpretations/Actions**

Parts of this section needed some many changes that I decided it would be much more understandable to do a complete repeal and rewrite. I tried to at least partially explain by including the current law with highlighting the obviously needed title changes "Development Review Manager" and "Council Member" as well as other notations of what I was proposing. I also do not have strike through and underline add copy of §155.06 that I can provide you. I changed "Zoning and Development Administrator" to "Development Review Manager" throughout. I also changed "alderman" to "council member" throughout this section.

The first section that needed changes is (A) *Appeals to City Council*. I kept in this section for direct appeal to the City Council, the City Engineer's decision whether or not to issue a violation notice (and added his even more consequential and time sensitive Stop Work order). I added the Development Review Manger's decision not to recommend a vacation of a public easement or right-of-way as vacations will no longer be heard by the Planning Commission.

I redirected an appeal of either the Development Review Manager's or the City Engineer's decision regarding "development matters" to go first to the Planning Commission rather than directly to the City Council. I also redirected the City Engineer's interpretation or action regarding Floodplain Regulations and the Streamside Protection Zones to go first to the Planning Commission rather than directly to the City Council. Finally, the actions or interpretations of both the Urban Forester and Impact Fee Administrator were redirected to be heard first by the Planning Commission before possible later appeal to the City Council.

I did not recommend any changes to (B) *Appeals to Board of Adjustment*.

For (C) *“Appeals to the Planning Commission.”*

I left in subsection (1) Required Dedications and Improvements and added that when determining if the City’s demanded exactions might exceed the rough proportion of the impact of the development on city infrastructure needs, that Planning Commission should also include consideration of any required impact fees paid by the developer.

Subsection (2) Administrative Approvals was unchanged except to correct the title to “Development Review Manager.”

Subsection (3) City Engineer and Flood Plain Administrator was moved from the direct appeal to the City Council for development issues, floodplain regulations, and Streamside Protection Zones to an appeal first to the Planning Commission (with a later possible appeal of that decision to the City Council).

Subsection (4) Development Review Manager is a general right to appeal almost any development decision or interpretation to the Planning Commission.

Subsection (5) Urban Forester provides for their development type decisions to be appealed to the Planning Commission first rather than go directly to the City Council.

Please let me know if you have any questions about the proposed changes to §155.06 **Appeals From Staff Interpretations and Actions.**

**155.06 Appeals From Staff Interpretations/Actions**

(A) *Appeals to City Council.* The following staff interpretations/actions may be appealed to the City Council by an owner of record of the property in question or an **alderman** on behalf of a resident of the city:

(1) **Zoning and Development Administrator.** → *appeals to Planning Commission*

(a) *Design Overlay District requirements.* The decision of the **Zoning and Development Administrator** not to exempt property from the Design Overlay District requirements as allowed in §161.28(G).

(b) *Development Matters.* An interpretation or decision of the **Zoning and Development Administrator** regarding development matters, including subdivisions, large scale developments, parking and loading, and outdoor lighting may appeal.

(2) *City Engineer.*

(a) *Stormwater, Drainage, and Erosion Control Requirements.* The decision of the City Engineer to issue a violation notice related to these requirements. *or stop work order*

(b) *Development Matters.* An interpretation or decision of the City Engineer regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems may appeal.

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(d) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.

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(4) *Impact Fee Administrator.* Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159 Fees.

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(1) **Zoning and Development Administrator—Zoning.** An interpretation or decision of the **Zoning and Development Administrator** regarding zoning matters may appeal.

(2) *Building Safety Division Director—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Division Director, made in the administration of Airport Zone, Chapter 165, may appeal.

(C) *Appeals to the Planning Commission.*

(1) Required Dedications and Improvements.

- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, development permit, or otherwise within 10 days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications and improvements meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."

(2) Administrative Approvals.

- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Zoning and Development Administrator regarding development matters that are approved administratively, as required by Chapter 166.02 (C) may appeal the decision to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
  - (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
  - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
  - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
  - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
  - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.

## 155.06 - Appeals From Staff Interpretations And Actions

### (A) Appeals to City Council.

(1) The City Engineer's decision to issue a violation notice or stop work order may be appealed to the City Council by an owner of record of the property in question or a council member on behalf of a resident of the city.

(2) The Development Review Manager's decision to deny a vacation of any public easement or right-of-way (whether constructed or not) or portion thereof may be appealed by the owner of record of the property.

### (B) Appeals to the Board of Adjustment. The following interpretations and decisions may be appealed by an owner of record of the property in question or a council member on behalf of a resident of the city to the Board of Adjustment:

(1) *Development Review Manager—Zoning.* An interpretation or decision regarding zoning matters.

(2) *Building Safety Officer—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Officer, made in the administration of Airport Zone, Chapter 165.

### (C) Appeals to the Planning Commission.

#### (1) Development Review Manager's Required Dedications and Improvements.

(a) An owner or developer who is aggrieved by the Development Review Manager's interpretation of the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement (including impact fees), which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, large or small site improvement plans, subdivision, building permit, lot split, other development permit, or otherwise within 10 working days of the final development approval that included the disputed exactions. The appeal must be presented to the Planning Division in writing and state the grounds or reasons for the appeal.

(b) The Planning Commission shall determine after public hearing whether the required dedications, improvements, and fees meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."

(c) Any potential reduction of impact fees must be approved by the City Council.

#### (2) Administrative Approvals and interpretations by Development Review Manager

(a) A resident of the city or an owner/developer who is aggrieved by a decision of the Development Review Manager regarding development matters that are approved administratively {as required by Chapter 166.02(C)} may appeal the final development approval decision affected by this matter to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 working days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:

(i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.

(ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.





- (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
  - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
  - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
  - (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
  - (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.
- (3) City Engineer and Flood Plain Administrator
- (a) *Development Matters.* An interpretation or decision of the City Engineer or Floodplain Administrator regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems.
  - (b) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
  - (c) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.
- (4) Development Review Manager's Interpretation or Decision of other Development Matters.
- An interpretation or decision of the Development Review Manager regarding development matters including subdivisions, large scale developments, parking and loading, outdoor lighting, compliance with applicable design standards, or any other development matters.
- (5) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.

(D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.



## CityClerk

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**From:** CityClerk  
**Sent:** Wednesday, July 22, 2020 8:54 AM  
**To:** Kyle Smith  
**Subject:** RE: Minutes of Appeals Ordinance 4334

Kyle,

Thank you for your email regarding AMEND § 155.04 ALDERMAN APPEAL. Per your request our office will add the below minutes to this item as additional information.

[2001-09-04 Pages 2-4](#)

[2001-07-17 Pages 2-3](#)

[2001-07-03 Pages 7-9](#)

Thank you,

*Kara Paxton*

**City Clerk Treasurer**  
City of Fayetteville, Arkansas  
[kapaxton@fayetteville-ar.gov](mailto:kapaxton@fayetteville-ar.gov)  
T 479.575.8323



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**From:** Kyle Smith <citycouncil@kyle4fay.org>  
**Sent:** Tuesday, July 21, 2020 8:17 PM  
**To:** CityClerk <cityclerk@fayetteville-ar.gov>  
**Subject:** Minutes of Appeals Ordinance 4334

**CAUTION:** This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kara,

Here are the segments of minutes regarding the passage of "Appeal" Ordinance 4334 that are relevant to our current item 2020-0571. I have not attached them here, but I had them up so I included links (if they work). Would you please add this history to the packet and distribute it to the Council for the next meeting?

[2001-09-04 Pages 2-4](#)

[2001-07-17 Pages 2-3](#)

Thank you!

**Kyle Smith**

Council Member

Ward 4 Position 2

City of Fayetteville, Arkansas

[citycouncil@kyle4fay.org](mailto:citycouncil@kyle4fay.org)

479.274.8881

[Facebook](#) | [Twitter](#) | [Website](#)

Mr. McKinney stated that was a factor in the equation. It was not just the direct income by payment of lease holding, they also had to look at the side benefit that this business provided to their traffic count the tower. It would affect them next year.

Alderman Thiel stated she thought this was a win win situation and in the long run would pay for itself.

**Alderman Trumbo moved to approve the resolution. Alderman Thiel seconded the motion. Upon role call the motion carried by a vote of 6-1-0, Jordan voting nay.**

*RESOLUTION 96-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**APPEAL:** An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was left on the first reading at the June 19, 2001 meeting.

**Alderman Trumbo moved to suspend the rules and go to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.**

Mr. Williams read the ordinance for the second time. He reminded the council that they might want to have a motion to delete section two.

**Alderman Trumbo moved to delete section two, emergency clause. Alderman Jordan seconded the motion.**

Ms. Paula Marinoni, an area resident, stated this had come out of a request from Central United Methodist Church for a parking lot. Preservationists and neighbors had opposed this. The church had a plan which had been approved in 1995 which had not been taken into consideration. The request had been voted in at Planning Commission. Alderman Davis and Trumbo had brought this forward for consideration. There was a State law which determined that Conditional Uses went from the Planning Commission to Circuit Court. This had always been the law, as far as she knew. Everyone else that had come before had been told their only opinion was to take it to Circuit Court. She had been told this five years ago. She could not believe that they could not take it to City Council. A citizen should have the right to appeal to their own governing body before taking it to Circuit Court. Five years ago when she questioned this, she had been told by State Representative Sue Madison that this was an old law and should be changed, but it was the law. That was the way it had always been presented to other entities who wanted to challenge. She did not think that they had the authority to pass the ordinance. The city attorney had sited other ordinances in Arkansas where other cities had appealed their conditional uses to the city council. Just because someone else was doing something did not make it legal. The fact that no one had ever challenged them did not make it right. She questioned what the State Law was. After the last meeting, she contacted their

## City Council Minutes

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State Representative, Jan Judy, and asked her for an Attorney General opinion. She presented the request to the Attorney General. The request had been assigned to an attorney who would work on this. It had a rush on it. She asked them to leave the item on this reading and/or table it until the opinion came in. She did not believe the opinion would be in before the two weeks. This was not an emergency and they had the time to wait. She had also asked in the opinion if they could use the city trolley to help with the churches on Sundays and the merchants on Dickson Street and downtown.

Mr. Richard Maynard, an area resident, stated he was concerned about this because it changed something that was not a policy decision. He did not think it was the no brainer that it appeared to be. It was a burden that they would be taking on. This was not a policy decision. It was someone asking the city for a break. He did not see any problem with the process ending at Planning Commission. He could see some problems with this being an appeal. This was basically, just taking a second look at it. If it was an appeal, they would not be just looking at the whole thing again, but they would be looking at on whether the findings of fact were followed. He thought that would put the burden on whoever was appealing that they had to come to them with specific fault in the findings and fact. It would get rid of frivolous appeals. He did not believe he would have a problem finding three aldermen to appeal the decision for him, however, if they had point out where they went wrong and where they disagreed with their finding of fact. He encouraged them to have stricter guidelines. As a citizen, he was afraid they were getting into micro managing. They things he would rather them micro manage was their money. He saw many things put on the consent agenda for large sums of money that he was not sure why they were on there. His concern was that once they had a contentious conditional use appeal more things would be put on the consent agenda. He felt they were taking on a lot of work.

Alderman Trumbo stated that when he called the other cities which did appeal their conditional uses to the city council, he had asked the kinds and volumes. They had replied that they were rare.

Mr. Hugu Ernest, Urban Development Director, stated the city of Little Rock had very few appeals and they were usually regarding the use of manufactured homes.

Mr. Maynard stated he felt the Planning Commission looked at the Conditional Uses more carefully than they did the rezoning, which automatically came to them.

Alderman Santos stated he had assumed that with the appeal they would have to cite specific ordinances or things from the general plan that showed where the Planning Commission decision was not in line.

Mr. Williams stated he had placed this within the same paragraph that allowed the decision of the Planning Commission to be appealed to the City Council. All of the other provisions allowed an alderman to appeal the decision of the Planning Commission. There was nothing in here that

required any particular thing to be cited beyond what was already in the appeals section. In reference to comments made earlier from Ms. Marinoni he quoted from the State Law regarding the functions of the Board of Adjustments and not the Planning Commission regarding the appeal of variances. Variances from the Board of Adjustments had to be appealed to the Circuit Court. Under another statute they were given the authority to change their ordinances.

*THE ORDINANCE WAS LEFT ON THE SECOND READING.*

**NEW BUSINESS**

**ZONING DISTRICTS:** An ordinance amending Chapter 160, Zoning Districts, and Chapter 161, Zoning Regulations, of the Unified Development Ordinance to include additional multi-family zoning districts, RMF-6, RMF-12, and RMF-18.

*Mr. Williams read the ordinance for the first time.*

**Alderman Santos moved to suspend the rules and move to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.**

*Mr. Williams read the ordinance for the second time.*

**Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Zurcher seconded the motion. Upon roll call the motion carried unanimously.**

Mr. Williams stated the Council did pass this ordinance several months ago, but the ordinance did not have the proper definitions. They had to go back and put the proper definitions in.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.**

*ORDINANCE 4325 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**SKATE PARK:** A resolution authorizing the Parks and Recreation Division to apply for up to \$200,000 (50/50 matching funds) in grant money for the development of a skate park.

Mr. Eric Schuldt, Parks and Recreation, stated the Skate Park idea had been brought up years ago. The Parks and Recreation had been working on it for two and a half years. It was originally in the CIP for 2000. They had \$75,000 allocated to start that project. Staff knew at that time they would need more funds at a future date. Until they got to the community involvement process and a consultant hired they did not know the direction to go. There were many different ways to build a park. They could build a wood, steel or concrete park. They had formed a subcommittee. The subcommittee recommended a concrete park. It was traditionally what was being built. It was the

**WOMEN'S SHELTER:** A resolution approving a lease agreement with the Project for Victim's of Family Violence, to lease city land for the construction of a new Battered Women's Shelter.

*RESOLUTION 104-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**LOCAL LAW ENFORCEMENT BLOCK GRANT:** A resolution approving the application for the 2001 Local Law Enforcement Block Grant in the amount of \$36,058.00. The total project is \$40,065.00 and requires a 10% City match of \$4,007.00. This grant will be used for the purchase of video equipment to place in patrol cars.

*RESOLUTION 105-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**Alderman Zurcher moved to approve the consent agenda. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.**

Mr. Gary Lowery, an area resident, stated July 1, 1991, the City passed a pass through fee of fifteen cents per month to the water customers for the Federal Safe Drinking Water Act, Act 1053. In 1993 this provision was increased on June 20, 1993, by ten cents. That increase now, accumulatively, is twenty-five cents. It was not a pass through resolution of twenty-five cents that they should be discussing, it should be a pass through increase of ten cents, not twenty-five cents. It should be an inclusion of the fifteen cents plus the ten cents, which would be twenty-five cents. They were making a pass through of twenty-five cents. The city had neglected State law for ten years by not having it printed on the water bills.

## **OLD BUSINESS**

**APPEAL:** An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was amended and left on the second reading at the July 3, 2001 meeting.

*Mr. Williams read the ordinance for the third time.*

Alderman Davis asked if they had heard anything back from the Attorney General's office.

Mr. Williams stated he had called the Attorney General's office to see where the request was. The person who did their zoning opinions was on vacation and would not be back until the first of August. They could not assure him that they would have an opinion by the seventh. He did not when they would have an opinion back to him.

Mr. Mort Gitelman, 1229 West Lake Ridge Drive, stated he had served eighteen years on the City Planning Commission during the late 1960 through the mid 1980's. About thirty years ago they did a major revision of the Fayetteville Zoning Ordinance. They had debated the suitability of appeals

and conditional use permits from the Planning Commission to the City Council. He had been teaching land use law for thirty-six years, the vast majority of cities did not allow appeals from the Planning Commission on Conditional Use permits, but there was nothing in Arkansas law that prevented them from allowing such appeals if they wanted to amend the ordinance. There were a lot of good reasons not to. The basic reason is that if they understand the theory of the conditional use permit. It makes the Planning Commission an administrative agency of the city. The Planning Commission had approximately ten standards they were supposed to look to in whether or not to grant a conditional use permit. The Planning Commission was to apply those standards. Once they started allowing appeals of conditional use requests to the city council, they might be opening a box that they might not want to. They would encourage a lot of appeals. If they stopped to consider all the conditional uses allowed in the zoning ordinance, for example, home occupations and duplexes. Many of the conditional use requests were controversial. The incentive for the Planning Commission to not to devote full attention to resolving those issues at the administrative level, would mean that they would start coming to the council. The City of Little Rock did allow appeals to the city council. He did not believe the city staff and city attorney are very happy with the process down there. There was no appeal from the Board of Adjustments on variances. State law prohibits it. It was the same sort of thing. The Board of Adjustment hears the individual facts and cases and decided on whether or not to grant a variance. There was no appeal to the legislative body of the city. It went to court. He thought the conditional use permit was very much the same sort of thing. They should look at the Planning Commission as one of their administrative agencies that they had given them the power to apply those standards in the ordinance to individual requests. He stated it would be unwise to change the procedure. He was sure their meetings were long enough as it was. This did not mean the Planning Commission was always going to be right.

**Alderman Thiel moved to table the item until they had a decision from the Attorney General. Alderman Zurcher seconded the motion. Upon roll call the motion carried unanimously.**

*ORDINANCE WAS TABLED.*

#### **NEW BUSINESS:**

Mayor Coody stated the next three items were related to each other, but they would be addressing each one individually.

**SPECIAL SALES TAX ELECTION:** An ordinance calling a special election to decide whether or not to approve a three-fourths cent ( $\frac{3}{4}\%$ ) sales and use tax to fund the issuance of not to exceed one hundred twenty-five million dollars of Capital Improvement Bonds to finance all or a portion of the acquisition, construction, reconstruction, extending, improving and equipping of wastewater treatment plants, sewerage and related facilities.

*Mr. Williams read the ordinance for the first time.*

protect and preserve what they had downtown.

Mrs. Bootsie Ackerman, DDEP, stated she hoped that they could use this information to overlay with the earlier data that they had when she stated the project to see how far that they had come in five years and help them plan the next five years.

## **CONSENT AGENDA**

**APPROVAL OF THE MINUTES:** Approval of the minutes from the August 21, 2001 meeting.

**SFCDC:** A resolution approving the transfer of the property located at 1035 S. Washington Avenue from the City of Fayetteville to the South Fayetteville Community Development Corporation. The funding source for this property purchase was the 2001 HUD Community Development Block Grant.

*RESOLUTION 120-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**ARVEST BANK:** A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

*RESOLUTION 121-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**GRANT ACCEPTANCE:** A resolution accepting 2001 Local Law Enforcement Block Grant Award and agreement to the assurances and certifications and the approval of a budget adjustment.

*RESOLUTION 122-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**AIRFIELD PAVEMENT REHABILITATION:** A resolution accepting the low bid of \$2,555,442.65 from McClinton-Anchor for the Airfield Pavement Rehabilitation Project. A 5% contingency fee is also included in the total cost of the project. The total project cost is \$2,849,608; and approval of a budget adjustment.

*RESOLUTION 123-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**Alderman Zurcher moved to approve the consent agenda. Alderman Jordan seconded. Upon roll call the motion carried unanimously.**

## **OLD BUSINESS**

**CONDITIONAL USE APPEAL:** An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional



use. The ordinance was tabled on the third reading at the July 17, 2001 meeting until the Attorney General's opinion was received.

Alderman Young stated there were two sides to this. His opinion and the majority of the people that he had spoken with believed that it would be best to have a recourse to the City Council.

Alderman Santos stated the only real complaint that he had heard was for the appeals to be based on specific finding by the Planning Commission. The way it had been explained to him was that it had to be a de novo appeal. They did not really consider anything that happened at the Planning Commission level.

Mr. Williams stated the other appeal to them were primarily were de novo, when they looked at the other three things that were allowed to be appealed. He thought they could set up the appeals any way they wanted to.

Alderman Young stated for practicality they probably needed to spell out the reasons for appeal.

Mr. Williams stated the Planning Commission had specific guidelines for Conditional uses. They could identify the ones that they disagreed with.

Ms. Paula Marinoni, an area resident, stated she had requested the Attorney General's opinion through State Representative Jan Judy. She stated this had always been presented that this was the law and never before had there been an uproar because someone had been affected by it. She had seen this as an affront on those people who had been adversely affected by this in the past. Her original issue was that she felt it was inappropriate for two alderman from an outside ward to try and change the law because it affected one particular group when this had never been an issue before. Now that the opinion had come back in the favor that this is possible, she was glad. It should be possible for a citizen to appeal to the council and not have to go to Circuit Court. The nature of a conditional use, they were asking for a use in a ward or zone that is not normally accepted in that zoned. The people most likely affected are the people who would not have the means to go to Circuit Court. If they would consider at time the request for three aldermen to bring it forward. She did not want to see this being away to get around the Planning Commission. She suggested the aldermen appealing the conditional use should be from the ward affected, at the very least one person from that ward.

**Alderman Zurcher moved to amend the ordinance requiring two of the three aldermen be from the Ward affected. Alderman Santos seconded.**

Alderman Thiel stated she wanted to make this difficult. She had a lot of concerns and reservations about doing this. She did like the idea of requiring two aldermen from the ward affected.

Alderman Young stated there was a danger in making it to difficult.

Alderman Thiel stated the only reason she was supporting it was because she had seen where neighborhoods had been affect and they did not have the means to hire an attorney and fight. If they did not make it difficult, they would have every conditional use appeal. She felt this was taking power away from the Planning Commission.

Mr. Hugh Ernest, Urban Development Director, stated he had called Little Rock and asked them to check the number of appeals of conditional uses. Over a year period there had been twelve and fourteen. The majority of them were manufactured housing. It was a singular right of the applicant to make the appeal with no requirement to secure votes from any aldermen or active Board of Directors. He pointed out the use of appeal was not that common. If the Planning Commission did their job and followed the technical conditions that were required for a conditional use, it was usually apparent to the applicant that it was going to stand on its merit.

Alderman Santos stated he supported this because it made the City Council more responsive. It give the people more of a chance. It made them more accountable to the people and having the two alderman from the ward appeal the conditional use made them more accountable to the people of their ward. He added supporting this appeal did not mean that he would vote for it when it came before council. He was willing to listen.

**Mayor Coody asked shall the amendment pass. Upon roll call the motion carried by a vote of 6-1-0. Trumbo voting nay.**

Mr. Feinstein, an area resident, asked if they had an establishment that was moving from one area to another who would be the affected area.

Alderman Young stated it would be the land.

Mr. Feinstein asked why they were limiting it to only conditional uses.

Alderman Zurcher stated other appeals were allowed.

**Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-1-0. Trumbo voting nay.**

*ORDINANCE 4334 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**NEW BUSINESS**