

ORDINANCE NO. 2005-11

AN ORDINANCE AMENDING THE ZONING REGULATIONS AND ZONING MAPS OF THE CITY OF OZARK; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, the Ozark Planning Commission conducted a public hearing on May 5, 2005, at which the proposed Amendment was discussed with members of the public; and,

WHEREAS, the public hearing was advertised in a paper of general circulation in the City of Ozark at least fifteen (15) days prior to the meeting; and,

WHEREAS, the City Council has heard the report and recommendation of the Ozark Planning Commission as to the Amendment of the Ozark Zoning Regulations and maps; that said property is owned by Letha & Stanley Coyle.

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

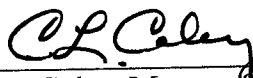
SECTION 1: That the zoning regulations and map of the City of Ozark shall be amended to reflect that the zoning of the following described property located in the Ozark District of Franklin County, Arkansas is modified from R-1 to C-2 to-wit:

Part of the Southwest Quarter of the Southwest Quarter of Section 26, Township 10 North, Range 27 West, More Particularly described as beginning at a point 360 feet North of the South line of said Section 26, on the East line of the said Southwest Quarter of the Southwest Quarter and running thence North 175 Feet, thence West 300 feet, Thence South 175 feet, Thence East 300 Feet to the point of beginning. Physical address is 913 North 18th Street.

SECTION 2: All Ordinances, parts of Ordinances or Regulations in conflict herewith are hereby repealed.

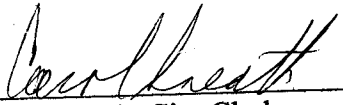
SECTION 3: That the lack of C-2 zoning at the above-described location has resulted in conditions which are detrimental to the City of Ozark and its citizens. An emergency is therefore declared and this Ordinance being necessary for the preservation of public peace, health and safety shall be in full force and effect from and after its passage.

PASSED this 12th day of December 2005.



C.L. Coley, Mayor of Ozark

ATTEST:



Carol Sneath, City Clerk

Arkansas Municipal League

Northwest Arkansas Office
1311-A Clayton Street
Springdale, AR 72762
Tel: (479) 725-1014 or
(501) 374-3484 ext. 240
Fax: (501) 537-7251
dcs@arml.org



August 29, 2005

Via Facsimile and Regular Mail

Carol Sneath
City of Ozark
P. O. Box 253
Ozark, AR 72949

Dear Ms. Sneath:

This is in reply to your faxed inquiry dated August 18, 2005. You have asked for an opinion regarding the rezoning request of Stanley and Letha Coyle. Most of the factual allegations I have at my disposal regarding this matter are contained in a letter to Mayor Coley dated August 9, 2005, from Attorney Roderick Weaver, which you included with your faxed inquiry.

First, I must make it clear that it is beyond the scope of the League's inquiry program to render specific legal advice regarding circumstances that the League does not have the time, resources, or staff to fully investigate. Such specific legal advice must be rendered by your city attorney, whose role it is to conduct a thorough and professional investigation of any relevant facts as a basis for offering a legal opinion on the matter at hand.

We can, however, offer *general* information about the law on a particular subject. However, again it must be stressed that the facts relied on in this letter are merely assumed to be correct, and that different facts or circumstances could result in a different outcome. In addition, it is particularly important to point out that the presumed facts are taken from the letter of an attorney who is an advocate for individual citizens with an interest that, at present, appears to be adverse to the decision of the city council. I will assume for the sake of this letter that Mr. Roderick's statement of the facts is correct, although I realize that different or additional circumstances may be present.

According to Mr. Roderick's letter, the Coyles wish to have their property rezoned from residential to commercial. He states that their property is "completely surrounded by property zoned commercial." He alleges that the city Planning and Zoning

Commission voted to approve the rezoning, but that the council has voted against the change. He states that the sole objection offered to the planning commission was the potential increase in traffic. He also suspects that the real reason for the council's rejection derives from a family dispute between his clients and certain other citizens living in the vicinity, who, he states, do not have property adjacent to the Coyles.

Mr. Roderick states in his letter that his next step will be to file suit, seeking to declare that the city's denial of the rezoning is arbitrary and capricious. First however, he asked that the council reconsider its decision in the light of an Arkansas Supreme Court decision, *City of Conway v. Housing Authority*, 266 Ark. 404, 584 S.W.2d 10 (1979). I have reviewed this decision and it does appear to be relevant to the facts as alleged (and surmised) by Mr. Roderick. The *Conway* decision was also a review of a city's denial of a request to rezone property from residential to commercial. It likewise involved property that was completely surrounded by commercial property. Finally, the rezoning was asserted by the city to present potential traffic problems.

The court stated that it would not interfere with the city's denial unless the decision was "arbitrary," which it defined as "arising from unrestrained exercise of will, caprice, or personal preference; based on random or convenient choice, rather than on reason or nature." The Supreme Court found that *Conway's* denial was in fact arbitrary based on two considerations: 1) that the city wanted to acquire the property for itself, and 2) that the surrounding property was all zoned commercial. The court acknowledged the potential traffic problems, but held that they did not outweigh the foregoing factors.

Assuming all of Mr. Roderick's factual allegations and suppositions to be true, and that they are the "whole story," it would appear that the *Conway* case might well require the city to rezone the property. The first *Conway* factor, the desire by the city to acquire the property, is not present here. However, if Mr. Roderick's suspicion that the denial is motivated by personal concerns rather than valid planning and zoning factors were to be proven accurate, then a court might well conclude that the denial is arbitrary and thus invalid. While traffic concerns are not necessarily excluded by the *Conway* decision, that case shows that they can be outweighed by other factors.

Finally, Mr. Roderick states that this situation raises the specter of "spot zoning," which he contends is illegal. I am not convinced that this is automatically the case. My research indicates that not all single-parcel zones are unlawful. See Juergensmeyer and Roberts, *Land Use Planning and Development Regulation Law*, sec. 5.10 (West 2003); *see also Smith v. City of Little Rock*, 279 Ark. 4, 649 S.W.2d 454 (1983) ("spot zoning has been said to be invalid when it is primarily for the private interest of the owner of the property affected, and not related to the general plan for the community as a whole.") I believe the ultimate question will center on whether the city's decision is arbitrary as set forth in the *Conway* decision.

Finally, you state that your city attorney has advised you that it is her opinion that if faced with litigation on this matter, the city would lose. Again, as I have not made an

independent investigation of this case, nothing contained herein is intended to contradict the advice of your city attorney.

I hope this helps and please let me know if I can be of further assistance.

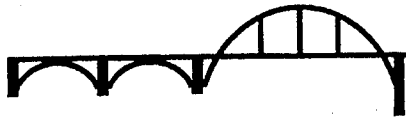
Sincerely,

A handwritten signature in cursive script that reads "David Schoen".

David Schoen
Legal Counsel
Arkansas Municipal League

DCS/jta

Cc: Neva Witt, Esq.



CITY OF OZARK

P.O. Box 253
Ozark, AR 72949

Phone: 501-667-2238
Fax: 501-667-4515

NOTICE OF PUBLIC HEARING

Mayor
Todd M Timmerman

Notice is hereby given that the Ozark Planning Commission will hold a public hearing on an application for R-1 to C-2 zoning in the City of Ozark. Property hereafter described:

City Clerk
Carol Sneath

Part of W/2 of SW/4 S26 – T10W, Range 27 West. Physical address being 913 N. 18th Street.

City Attorney
John Verkamp

Notice is hereby given that the public hearing will be held at 7:00 p.m. on Tuesday, the 7th of May 2002, at the City Offices at City Hall in Ozark Arkansas.

Aldermen
Tom Edgin
Roxie Hall
W. D. House
Rick McClellan
T.R. McNutt
John Milam

Letha & Stanley Coyle
Petitioner

Bill Smith
Ozark Planning Commission

RUSH, RUSH & COOK
Attorneys at Law

Coy J. Rush, Jr.

David L. Rush

Craig L. Cook*

Eric Soller*

*Also Licensed in Oklahoma

FORT SMITH OFFICE
1713 South "D" Street
Fort Smith, Arkansas 72901
Telephone: (479) 785-4466

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208 East Walnut
P.O. Drawer 807
Paris, Arkansas 72855
Telephone: (479) 963-3002

OZARK OFFICE
267 Airport Road, Ste. C
Ozark, Arkansas 72949
Telephone: (479) 667-0037

 Reply to Reply to Reply to

July 26, 2005

Ms. Neva Witt
Attorney at Law
800 N. 3rd Street
PO Box 286
Ozark, AR 72949

Re: Stanley and Letha Coyle

Dear Ms. Witt:

This letter is on behalf of the City of Ozark in regards to Mr. and Mrs. Coyle. It is my understanding that the zoning and planning commission did approve for their particular piece of property, which they currently reside in and operate a business, to be zoned commercial. It is also my understanding that even though a recommendation was made to the board that the board did not approve same nor did they take the appropriate action in order to decline same. It is also my understanding that all of the properties that surrounds this piece of property, which is located on Highway 23, is zoned commercial and my clients are giving the city council members one last time to rectify this situation otherwise they have informed me that they may wish to take all necessary legal action.

After you have had the opportunity to review this letter, please give me a call to let me know what the city council's position is regarding this matter.

Yours very truly,

Craig L. Cook
Attorney at Law

CLC/amh

cc: Stanley and Letha Coyle

Roderick H. Weaver

Attorney at Law

106 Hill Street
Clarksville, Arkansas 72830
TEL. (479) 754-2512
FAX (479) 754-7744

August 9, 2005

Hon. Bat Coley
Mayor, City of Ozark
607 West College
Ozark, AR 72949

Re: Stanley and Letha Coyle Zoning Request

Dear Mayor Coley:

I have been employed by Mr. and Mrs. Stanley Coyle to represent them in regard to their request for a zoning change.

It is my understanding that Mr. and Mrs. Coyle own real property located at 913 North 18th Street in the City of Ozark. Apparently, they have been trying for a number of years to have their property rezoned from residential to commercial since all of the surrounding property is zoned commercial. Upon further inquiry, I determined that Mr. and Mrs. Coyle's property is completely surrounded by property zoned commercial and include such properties as Arkansas Valley Vo. Tech., a convenience store, J. C. Penney's, Merle Norman, the phone company, the co-op and a car lot to mention just a few.

Mr. and Mrs. Coyle explained to me that they went before the Planning & Zoning Commission and all of the commissioners with the exception of one voted to approve the zoning change of Mr. and Mrs. Coyle's property. Of course, the Planning & Zoning Commission's recommendation had to be approved by the City Council and on July 11, 2005, this matter was brought before the City Council and, surprisingly, the Council voted 5-1 against the zoning change.

Legally, the next step is for Mr. and Mrs. Coyle to file a lawsuit against the City of Ozark and seek a determination from the circuit court that the action of the City Council was arbitrary and capricious.

However, before filing suit I recommended to Mr. and Mrs. Coyle that they allow me on their behalf to request of you and the City Council that their rezoning request be put on the agenda for the City Council meeting in September and that the City Council would perhaps review its earlier decision in light of my request and because of the case law I am providing to you herein.

Hon. Bat Coley
August 9, 2005

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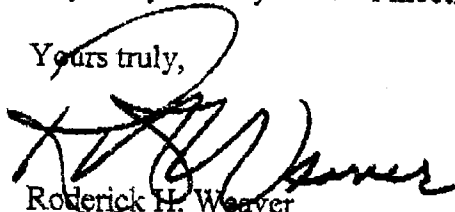
The only objection to the rezoning that was put forth at the Planning & Zoning Commission was that the proposal involved increased traffic which in and of itself is not very believable. I suspect that the real reason that there was an objection to the rezoning has its genesis in a family dispute between my clients and some of those living on Johnson Street. I actually wonder if the folks living on Johnson Street have any standing to object to the rezoning request of Mr. and Mrs. Coyle since none of the Johnson Street individuals have property fronting on 18th Street adjacent to my clients. Be that as it may, as you can see from one of the cases I've enclosed, a mere increase in traffic was held not to be legitimate reason to prevent a rezoning.

In effect, my clients are an island because their property is the only property in the immediate vicinity that is zoned residential. As I am sure your able city attorney has advised you, spot zoning is illegal. In effect, the failure of the City Council to rezone my clients' property commercial amounts to spot zoning and is reason in and of itself for a court to direct that my clients' property be rezoned.

I am hopeful that under your able leadership the City Council will agree to revisit Mr. and Mrs. Coyle's rezoning request and do the right thing so that an action in circuit court will not become necessary.

Please advise me of the date and time in September when I can appear on behalf of Mr. and Mrs. Coyle at your City Council meeting.

Yours truly,



Roderick H. Weaver
RHW:mlk

cc: Neva Witt, Ozark City Attorney
Mr. & Mrs. Coyle

Enclosure

Service: Get by LEXSEE®
Citation: 266 ark 404

266 Ark. 404, *; 584 S.W.2d 10, **;
1979 Ark. LEXIS 1472, ***

THE CITY OF CONWAY, ARKANSAS v. THE HOUSING AUTHORITY OF THE CITY OF CONWAY,
ARKANSAS

No. 79-36

Supreme Court of Arkansas

266 Ark. 404; 584 S.W.2d 10; 1979 Ark. LEXIS 1472

July 9, 1979, Opinion delivered

PRIOR HISTORY: [***1]

Appeal from Faulkner Chancery Court, Richard Mobley, Chancellor.

DISPOSITION: Affirmed as Modified.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant city sought review of an order of the Faulkner Chancery Court (Arkansas) setting aside a determination by its council that the city's planning commission had properly denied an application by appellee, a public housing authority, to rezone property it owned. The property was originally zoned for residential use but the authority had succeeded in obtaining an order rezoning it as a commercial district.

OVERVIEW: The authority sought to have its property rezoned to commercial use because it was bounded on all four sides by commercial uses, because the authority had failed to attract a single bid for the property when it was offered for sale, and it did not want to accept the city's offer to take the property in exchange for its payment of related debt. When the city planning commission denied the authority's application for rezoning and the city council affirmed that denial, the authority appealed to the circuit court, which held that the city's action was arbitrary and unreasonable. Having so held, the circuit court ordered the application granted. The city appealed but the court modified the order. Noting that the chancellor heard the evidence and inspected the property, after which he determined that the city's action was arbitrary, the court upheld the chancellor's ruling. The record supported the conclusion that the city actually wanted to obtain title to the subject property, after which it would rezone it to commercial use, that the possibility that rezoning would create a traffic problem was an insufficient basis for refusing rezoning, and that its refusal decision was arbitrary.

OUTCOME: The court modified the order granting rezoning to require the city to rezone the property with all deliberate speed and affirmed the order as modified.

CORE TERMS: zoning, residential, business property, municipality, chancellor, ordinance, rezone, chancery, city council, de novo, classification, adjacent, rezoned, zoned, erect, legislative function, reasonable manner, business district, power to review, automatically, classified, rezoning, vested, island, service station, property owner, inequitable, capricious, classify, withhold permission

LexisNexis(R) Headnotes ♦ [Hide Headnotes](#)

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[Real & Personal Property Law](#) > [Zoning & Land Use](#) > [Judicial Review](#)

HN1 ♦ **Ark. Acts 6 (1924) is the basic authority for zoning regulations by cities in Arkansas. Section 3 thereof gives the right to adjacent property owners to appeal to the chancery court to protect their property from depreciation by reason of setting up exceptions to the zoning ordinances. While the Act is silent as to the procedure to be used when property owners are otherwise aggrieved thereunder, the Supreme Court of Arkansas has traditionally reviewed such matters when they have been determined by a chancery court. Because there is generally no procedure to appeal the decisions of the cities, either the chancery or circuit court has jurisdiction over complaints on this subject.** [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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[Evidence](#) > [Procedural Considerations](#) > [Inferences & Presumptions](#)

HN2 ♦ **It is presumed that a city council will exercise the power conferred on it under zoning ordinances in a fair, just, and reasonable manner.** [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN3 ♦ **The Supreme Court of Arkansas should not substitute its judgment for that of a city council and a trial court holding that a classification of certain property for zoning purposes is reasonable, unless it can be said from the evidence that the findings of the city council and the decision of the trial court are unreasonable and arbitrary.** [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN4 ♦ **Where a city council acts on a record showing sharp differences of opinion, and the chancery court thereafter finds that the city council acted in the utmost good faith and that the unanimous vote of all who participated was in response to the better judgment of each, the act taken by the council must stand unless and until the council, in changed circumstances, again considers the matter.** [More Like This Headnote](#)

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HN5 ♦ **Findings of municipal authorities in reclassifying land from a residential to a commercial use are not to be overruled by the courts unless such municipal action is found to be unreasonable and arbitrary.** [More Like This Headnote](#)

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HN6 ♦ **Residential property that is adjacent to property zoned for business use is not automatically entitled to rezoning as business property. This is so even though the highest and best use of the property might be other than residential. A court should sustain a city's action in zoning matters unless it finds that the municipality was arbitrary in setting up the ordinance.** [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN7: When a municipality, pursuant to authority granted by the General Assembly, takes action in creating zoning classifications, it is exercising a legislative function, and is not subject to review by the courts of its wisdom in so doing. Neither do the courts have power to review such legislative action by the cities in a de novo manner. The power of the courts to review municipal action is limited to determining whether or not such action was arbitrary, capricious, or wholly inequitable. The judiciary has no right or authority to substitute its judgment for that of the legislative branch of government. In zoning matters, the General Assembly has delegated legislative power to the cities in matters relating to zoning property. The role of the courts is, therefore, simply to determine whether or not the action of the municipality is arbitrary. "Arbitrary" describes an action that arises from unrestrained exercise of will, caprice, or personal preference; based on random or convenient choice, rather than on reason or nature. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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COUNSEL: *Jesse W. Thompson*, for appellant.

Henry & Graddy, by: *Robert H. Henry*, for appellee.

JUDGES: In Banc. John I. Purtle, Justice.

OPINIONBY: PURTLE

OPINION: [*406] [**11] The Conway Housing Authority is the owner of a block of land in the city of Conway, which is classified as residential (R-3). It is bounded across the entire south, east and north sides by property classified as B-3, which is Highway [***4] Service District. It is bounded on the west by property zoned B-1, which is Central Business District. Therefore, this property, which formerly contained multifamily residential buildings, is an island within the business district. All of the houses have been razed and there are no structures whatsoever on the property. The appellee attempted to sell the property while still classified as residential but was unable to obtain any bids. The city of Conway did offer to take the property off its hands for the amount of indebtedness against it. The evidence indicates the city of Conway desired [**12] the property for use as a B-3 classification. Appellee's application to rezone the property was denied by the planning committee and its action was affirmed by the city council. Appellee then filed complaint in the Faulkner Chancery Court and after a hearing the court rezoned the property as commercial (B-3). It is from this decree the appellant appeals.

The three points argued for reversal are as follows:

I.

THE COURT ERRED IN HOLDING FOR APPELLEE SINCE APPELLEE FAILED TO SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT THE CITY'S ACTION WAS ARBITRARY AND UNREASONABLE.

II.

THE [***5] COURT ERRED BY SUBSTITUTING ITS OPINION FOR THAT OF THE LEGISLATIVE ENTITY IN THIS ZONING DECISION ABSENT A CLEAR SHOWING OF ARBITRARINESS BY THE CITY.

[*407] III.

THE COURT ERRED IN REZONING THE PROPERTY DIRECTLY BY DECREE RATHER THAN BY ORDERING THE CITY TO REZONE BY ORDINANCE.

1924 Ark. Acts, No. 6, ^{HN1} is the basic authority for zoning regulations by cities in Arkansas. This act is codified as Ark. Stat. Ann. §§ 19-2804 -2807. 1924 Ark. Acts, No. 6, § 3, gives the right to adjacent property owners to appeal to the chancery court to protect their property from depreciation by reason of setting up exceptions to the zoning ordinances. The act is silent as to the procedure to be used when property owners are otherwise aggrieved by the act. However, we have traditionally reviewed such matters when they have been handled in chancery court. Since there is generally no procedure to appeal the decisions of the cities, it is logical that either the chancery or circuit court would have jurisdiction to hear complaints on this subject.

The zoning statute was first considered by this Court in the case of *Herring v. Stannus*, 169 Ark. 244, 275 S.W. 321 (1925). The *Herring* [***6] case involved the application of a property owner to erect a filling station at the southwest corner of Wright Avenue and Wolfe Street in the city of Little Rock, Arkansas. The neighbors adjacent to this property protested the granting of the permit by the city by filing an action in the chancery court. This type action was specifically authorized by the General Assembly and appears as Ark. Stat. Ann. § 19-2806. There we held the statute and the ordinances were constitutional and, further, that the city had not abused its discretion in granting the permit. In *Herring* we stated:

As we have said, ^{HN2} it is to be presumed that the council will exercise the power conferred on it in a fair, just and reasonable manner, and its action in the instant case indicates that the power to grant or to withhold permission to erect a forbidden structure in the restricted area was properly vested in the council. The ordinance is not prohibitory, but is regulatory. Conditions vary in different portions of an area as extensive as the restricted district established by the ordinance under review, and, [*408] if any discretion is to be exercised, that right must be vested in some one, [***7] and no more appropriate agency for that purpose could be constituted than the council of the city, where the duty and authority to pass upon the question was vested.

The matter was considered again in *McKinney v. City of Little Rock*, 201 Ark. 618, 146 S.W. 2d 167 (1941), wherein we held the ^{HN3} supreme court should not substitute its judgment for that of the city council and the trial court holding that the classification of appellant's property for zoning purposes was reasonable, unless we could say from the evidence that the findings of the city council and the decision of the trial court are unreasonable and arbitrary. A somewhat similar situation was considered in *City of Fordyce v. Dunn*, 215 Ark. 276, 220 S.W. 2d 430 (1949). The city council of [***13] Fordyce denied Dunn the right to operate a service station in a residential neighborhood. The chancery court reversed although it found that the city council acted honestly and in good faith but had exceeded its authority. The chancellor then enjoined the city from interfering with the right of the property owner to erect a service station in the residential area. There we reversed and stated:

So [***8] here, the question being one involving discretion, and ^{HN4} the Council having acted on a record showing sharp differences of opinion, and the Chancellor having found that it acted in the utmost good faith and that the unanimous vote of all who participated was in response to the better judgment of each, the act must stand unless the Council, in changed circumstances, should

again consider the matter.

In a case involving a factual situation very similar to the present case we held that the ^{HNS} findings of the municipal authorities in reclassifying would not be overruled by the courts unless such action by the municipality was unreasonable and arbitrary. *Evans v. City of Little Rock*, 221 Ark. 252, 253 S.W. 2d 347 (1952). Again, we held that the zoning action of the city must not be arbitrary or capricious or wholly inequitable. *City of West Helena v. Brockman*, 221 Ark. 677, 256 S.W. 2d 40 (1953).

[*409] ^{HNS} Residential property which is adjacent to business zoned property is not automatically entitled to rezoning as business property. This is so even though the highest and best use of the property might be other than residential. To allow such rule would be to violate [***9] the zoning act itself. If we were to allow any property abutting business property to be rezoned as business property, there would be no need of a zoning ordinance in the first place. We have stated too many times to mention that the court should sustain the city's action in zoning matters unless it is found that the municipality was arbitrary in setting up the ordinance. *Baldrige v. City of North Little Rock*, 258 Ark. 246, 523 S.W. 2d 912 (1975).

The General Assembly saw fit to give cities the right to exercise zoning authority when it enacted 1924 Ark. Acts, No. 6. This granted the cities the right to legislate upon zoning matters. This right is, of course, not unlimited. Therefore, ^{HNT} when a municipality, pursuant to authority granted by the General Assembly, takes action in zoning classifications, it is exercising a legislative function and is not subject to review by the courts of its wisdom in so doing. *Little Rock v. North Little Rock*, 72 Ark. 195, 79 S.W. 785 (1904); *Little Rock Railway & Electric Company v. Dowell*, 101 Ark. 223, 142 S.W. 165 (1911). Neither do the courts have power to review such legislative action by the cities in a de novo manner. [***10] In fact, when the General Assembly attempted to grant the courts power to review such actions de novo, we held such action unconstitutional. *Wendeloth v. City of Fort Smith*, 251 Ark. 342, 472 S.W. 2d 74 (1971). Therefore, it follows that the power of the court to review the action of the municipalities is limited to determining whether or not such action was arbitrary, capricious, or wholly inequitable. The judiciary has no right or authority to substitute its judgment for that of the legislative branch of government. In zoning matters the General Assembly has delegated legislative power to the cities in matters relating to zoning property. The role of the courts is, therefore, simply to determine whether or not the action of the municipality is arbitrary. Arbitrary has been defined as "arising from unrestrained exercise of will, caprice, or personal preference; based on random or convenient choice, rather than on reason or nature." Courts are not super zoning commissions and have no authority to classify property according to zones.

[*410] In the present case the chancellor heard the evidence and inspected the property. He determined that the action of the city [***11] in this case was arbitrary. We agree with the chancellor in so holding. It is obvious the city of Conway wants to obtain title to this particular property and thereafter reclassify it either as B-1 or B-3. The property on all four sides is presently so rezoned. Although there is a [***14] possibility the use made of the property will create some additional traffic problem, such possibility does not outweigh the other factors which clearly demonstrate the action of the city in refusing to rezone the property as being arbitrary.

We agree with the learned chancellor that the city of Conway was arbitrary in refusing to rezone this property to classify it as B-3. Therefore, the case is remanded with directions to direct the city of Conway to rezone the property with all deliberate speed.

FAX COVER SHEET

CITY OF OZARK

P O Box 253
Ozark, AR 72949

479-667-2238

479-667-4515
Fax number

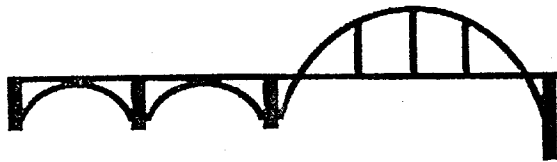
Send to: <i>Mark Hays</i>	From: C. L. "BAT" COLEY, MAYOR CAROL SNEATH, CITY CLERK CAROL TRIPLETT, ADM. ASST.
Date: <i>8-18-05</i>	
Office Location:	
Fax Number: <i>501-374-0541</i>	

- Urgent
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Total pages, including cover

9

Comments:



City of Ozark

P.O. Box 253
Ozark, Arkansas 72949

Phone 479-667-2238 August 18, 2005
Fax 479-667-4515

Mayor
C.L. "Bat" Coley

TO: Mark Hayes, Attorney
Arkansas Municipal League

City Clerk
Carol Sneath

FROM: Carol Sneath

City Attorney
Neva B. Witt

Mark – would appreciate an opinion from you on the attached material from an attorney representing Letha & Stanley Coyle. City Attorney Neva Witt addressed this to our council on August 15 where Neva informed council in her opinion if this case went to court, the city would lose. Council is still reluctant to approve this rezoning and has asked for a written opinion from your office and also from Western Arkansas Planning and Development.

Aldermen
Roxie Hall
Patty House
Rick McClellan
Vernon McDaniel
Lisa Medlock
Charles Stacy

If you have any questions in regard to this, don't hesitate to call myself at 479-667-2238 or Neva Witt at 479-667-4721.

Thank you for your help,

Carol Sneath
City Clerk

Met - we meet again on Sept. 12 for our regular session.

Roderick H. Weaver

Attorney at Law

106 Hill Street
Clarksville, Arkansas 72830
TEL. (479) 754-2512
FAX (479) 754-7744

August 9, 2005

Hon. Bat Coley
Mayor, City of Ozark
607 West College
Ozark, AR 72949

Re: Stanley and Letha Coyle Zoning Request

Dear Mayor Coley:

I have been employed by Mr. and Mrs. Stanley Coyle to represent them in regard to their request for a zoning change.

It is my understanding that Mr. and Mrs. Coyle own real property located at 913 North 18th Street in the City of Ozark. Apparently, they have been trying for a number of years to have their property rezoned from residential to commercial since all of the surrounding property is zoned commercial. Upon further inquiry, I determined that Mr. and Mrs. Coyle's property is completely surrounded by property zoned commercial and include such properties as Arkansas Valley Vo. Tech., a convenience store, J. C. Penney's, Merle Norman, the phone company, the co-op and a car lot to mention just a few.

Mr. and Mrs. Coyle explained to me that they went before the Planning & Zoning Commission and all of the commissioners with the exception of one voted to approve the zoning change of Mr. and Mrs. Coyle's property. Of course, the Planning & Zoning Commission's recommendation had to be approved by the City Council and on July 11, 2005, this matter was brought before the City Council and, surprisingly, the Council voted 5-1 against the zoning change.

Legally, the next step is for Mr. and Mrs. Coyle to file a lawsuit against the City of Ozark and seek a determination from the circuit court that the action of the City Council was arbitrary and capricious.

However, before filing suit I recommended to Mr. and Mrs. Coyle that they allow me on their behalf to request of you and the City Council that their rezoning request be put on the agenda for the City Council meeting in September and that the City Council would perhaps review its earlier decision in light of my request and because of the case law I am providing to you herein.