

MINUTES

The Rogers City Council met in *regular session* in the Council Chambers of the Maurice H. Kolman City Hall Building on Tuesday, May 22, 2018 at 6:30 p.m. The meeting was called to order by Mayor Greg Hines. The Invocation was given by Msgr. David LeSieur of St. Vincent de Paul Catholic Church. Those in attendance were led in the Pledge of Allegiance.

PUBLIC FORUM:

Christy Lamers spoke against the rezoning from A-1 to C-2 and read City Code 14-709 as follows: ***C-2 highway commercial district. (a) Purpose and intent. This district is intended for commercial uses, which depend upon high visibility, generate high traffic volumes or cater to the traveling public. These characteristics dictate that this district be located along or at the intersections of arterial classification streets or along frontage roads adjacent to the interstate or other limited-access streets.***

Lamers said, “Mr. Watkin’s clients are asking for C-2 zoning along with mixed-use commercial multifamily development. The percentage of space used for commercial is minuscule compared to the number of apartments that they would like to put in. This project does not require high visibility or cater to the traveling public, and by Mr. Watkin’s admission when he appeared with the PUD at a Planning Commission meeting, this development would never generate high traffic volumes. In fact, according to staff summary by Elizabeth Treat, the comprehensive growth map calls for this property to be developed as commercial along the central north/south core, flanked by office along the residential boundaries. Although the PUD depicted limited retail space within it, the dominant and primary use is clearly multifamily. The recommendation by staff was to deny it. Fast forward, two weeks from that PUD, to your definition of C-2 and nothing changes. Staff reports include “the developer appears to be using the PUD process in order to lock in the design elements of an apartment development in order to increase its chances of acceptance by adjacent landowners and commission.” In addition, this is not even close to a C-2 zoning

as it adds to the mixed use element or COM which is specific to the DRDC development code. This is the only place in the code where COM even appears. These areas are highlighted in blue on the comprehensive growth map. These areas are intended for downtown Rogers where a merchant would want to live in an apartment above their business. This is great use of COM as the buildings and infrastructure are already there and will help to revitalize the downtown district. What the Planning Commission has done and continues to do is take the COM code and apply it to the Pinnacle Hill Parkway in an effort to turn our area into what is aptly named as the Uptown District. I understand it, and kind of like it, but the fact that there are not specific zoning laws meant to apply to the new Uptown District area that does not show on the Comprehensive Growth Map. Mr. Watkins has said at the Planning Commission meeting, “someone has to be first”, well guess what, we were the first. We built our homes on an open field and appreciate that opportunity and have created great neighborhoods and great schools and given our hearts and souls. For the record, Mr. Watkins has been the Manors’ legal representative for the last twenty plus years, so we were the first. We ask that you not rezone from A-1 to C-2.”

Kate Williams, 8314 Fairway Lane, Rogers, representing the USA Pickleball Association, spoke in regard to the proposed bond issue ordinance and introduced Pickleball, which is the fastest growing sport for all ages, and also a recognized international sport.

Williams said the proposed bond issue will include improvements to Northwest Park and encouraged that the improvements would include adding or designating Pickleball courts in the plan.

Wes Doss, attorney, representing the Pinnacle Place Apartments, The Manors and Dr. Martin Porter, said the neighbors depend on the zoning

codes to protect the investments they have made in their homes and a development with a little retail and a lot of apartments is not C-2 zoning. The apartment use is not consistent with C-2 zoning and inconsistent with the land use plan. This is like trying to fit a round peg into a square hole and is not what the residents expected. To not follow the zoning code is arbitrary and capricious. Please give consideration to what the neighbors want.

Raymond Burns, Executive Director of the Rogers-Lowell Chamber of Commerce, provided a power-point presentation in support of the proposed Bond Ordinance calling for an election for Infrastructure Improvements for Streets, Parks, Fire and Police.

Burns said the Chamber has historically supported bond issues that have proven to be an effective way to improve transportation infrastructure, emergency response and management, recreational opportunities and creating jobs. This will not be an additional tax, but will continued for the completion of the projects that have been determined to be needed by city staff, community focus groups and surveys conducted by the chamber. Burns said by calling the special election in August rather than General Election in November will save money since interest rates are expected to rise by the end of the year, pledged the Chamber's support and requested council's approval to call for the bond election.

Burns introduced Eric Pinalto, President of the Rogers-Lowell Chamber of Commerce and President of Mercy Hospital.

Pinalto said he also chairs of the Committee for the Future of Rogers and echoed Burns comments. The Chamber members have reviewed the plans and provided input on the proposed bond issue and the Chamber fully supports it. Pinalto requested the approval to call for a special election for the future of Rogers.

The Public Forum was declared closed.

COUNCIL MEMBERS PRESENT:

Mark Kruger, Buddy Wright, Betsy Reithemeyer, Gary Townzen, Marge Wolf, Jerry Carmichael and Barney Hayes were present. Clay Kendall was absent.

OTHER OFFICIALS PRESENT:

City Clerk-Treasurer Peggy David, City Attorney Andrew Hatfield, Senior Staff Attorney Jennifer Waymack, Director of Parks & Recreation Jim White, Community Development Director John McCurdy, Public Relations Specialist Ben Cline, Parks Superintendent Stan Weaver, Water Utilities Superintendent Earl Rausch, Water Utilities Operations Manager Brent Dobler, Water Utilities Shared Services Manager Jene Huffman, Finance Director Casey Wilhelm, Police Chief Hayes Minor, Human Resources Thomas Dunlap, and Deputy Fire Chief B. J. Hyde.

ACTION ON MINUTES:

(May 8, 2018)

Motion by Wright, second by Townzen to approve the minutes of May 8, 2018 as submitted.

Voice vote: Unanimous -Yes. ***Motion carried.***

Approves the suspending of rules for the meeting.

Motion by Kruger, second by Wolf to suspend the rules to consider all items on the agenda by title only and on a single reading.

Roll call: Unanimous – Yes. ***Motion carried***

REPORTS OF BOARDS AND STANDING COMMITTEES:

(Agenda Item #1)

ORD. #18-26 Calling a Special Election in the City of Rogers, Arkansas on the Question of Issuing Bonds Under Amendment No. 62 to the Constitution of the State of Arkansas for the Purpose of Refinancing and Financing the Cost of Capital Improvements; Levying a one Percent (1%) Sales and Use Tax for the Purpose of Retiring Such Bonds and Prescribing Other Matters Pertaining Thereto

The ordinance was introduced by Councilmember Reithemeyer and read by title only by City Attorney Andrew Hatfield.

Reithemeyer, chair of the Finance Committee, reported a combined meeting of the Finance Committee and the Transportation Committee had met, recommended a “Do pass” and recognized Kevin Faught, Senior Vice President of Stevens, Inc., Bob Wright, Senior Manager

and Director with Crews and Associates, Shep Russell, Bond Counsel with Friday, Eldridge and Clark, and Taylor Marshall with Friday Eldridge and Clark Law Firm.

Faught reported, “He, Wright and Finance Director Casey Wilhelm began talks eighteen months ago about the appropriate time to move forward with the bond election. Because of the rise in interest rates that we are seeing, the sooner the election can happen, the better. This is not a new tax; it redirects the 1% tax toward the completion of projects that have been identified.”

The Mayor asked, “Shall the ordinance pass?”
Roll call: Unanimous – Yes. ***The ordinance is adopted.***

(Agenda Item #2)

RES. #R18-34 Authorizing Expenditures for Construction Costs Associated with Infrastructure Improvements at Lake Atalanta and Other Areas Affected by Storm Damage; Amending the 2018 Budget to Appropriate \$1,692,408.00 from FEMA Proceeds and Street Fund Reserves to Acct. #200-16-70980

The resolution was introduced by Reithemeyer and read by title only by Hatfield.

Reithemeyer reported the Finance Committee had met, recommended a “Do pass” and recognized Community Development Director John McCurdy.

McCurdy reported a design for the mitigation of damage to Lake Atalanta has been approved by FEMA. The cost analysis has also been reviewed by FEMA although we do not have final approval from them. We have a contract ready to go. The Corp of Engineers has given their approval and we will receive up to 75% of the reimbursement cost from FEMA once the improvements are completed.

Motion by Wolf, second by Kruger to adopt the resolution.

Voice vote: Unanimous – Yes. ***The resolution is adopted.***

OLD BUSINESS:

None.

NEW BUSINESS:

(Agenda Item #1)

ORD. #18-27 Accepting the Final Plat of The Estates at Southgate

The ordinance was introduced by Kruger and read by title only by Hatfield.

Geoff Bates presented the final plat for approval.

Community Development Director McCurdy reported all requirements have been met.

The Mayor asked, “Shall the ordinance pass?”
Roll call: Unanimous – Yes. ***The ordinance is adopted.***

The Mayor asked, “Shall the emergency clause pass?”
Roll call: Unanimous – Yes. ***The emergency clause is adopted.***

(Agenda Item #2)

ORD. #18-28 Rezone from A-1 to C-2, 10.28 Acres ± located at 4601 S. Champions Drive

The ordinance was introduced by Kruger and read by title only by Hatfield.

Bill Watkins, representing the developer, said the entire 13 acres will be part of the development with 3 acres of the 13 to remain as A-1 to serve as greenspace and the rest rezoned to C-2. This client has been very patient with the project that started one year ago, which is extremely unusual. The plan has been reviewed three times by Planning Staff and Commission in various forms where the following items were noted:

- Staff did not think this should be presented as a PUD. *Watkins said the client wanted to provide a commitment to the city and planning commission as to exactly what was going to be built.*
- The proposed development did not comply with the Comprehensive Growth Map.
- There is no provision for internal cross streets to connect the north and south properties.

Watkins said this rezoning request solves all of those problems because it is a straight C-2 zoning, not a PUD; the C-2 zoning complies with the Comprehensive Growth Map; and the internal cross streets will be provided in the development. The plan will go through the large scale development process where building height, setbacks, density and all other requirements will be addressed. To assume that there is x number of apartments would be a mistake, since that number has not been determined. The Density Committee of the Planning Commission will determine the density based on calculations and what is requested. It is not realistic to expect residential houses to be built on this property, it is too expensive for that use and wouldn't comply with the Comprehensive Growth Map, nor would R-O zoning. Staff supports this rezoning and the Planning Commission unanimously recommended the rezoning. This rezoning complies with Rogers City Code, the Comprehensive Growth Plan, is supported by city staff and planning commission. It is not arbitrary and capricious to approve, if anything it would be arbitrary and capricious to deny the rezoning.

Community Development Director John McCurdy provided responses to the comments that were made during the Public Forum that were not addressed by Mr. Watkins as follows:

- The original submission as a PUD included a staff report that recommended denial as a PUD, but the current staff recommendation is to approve to C-2 zoning.
- The city code was recently revised to allow residential use above the ground floor in Office, Residential-Office and Commercial zones, by right. It hasn't happened very much in Rogers, but the code does allow it. White Oak Station would be an example of this use.

Senior Staff Attorney Jennifer Waymack advised the council that the term arbitrary and capricious gets her “legal feelers up” and noted that both she and McCurdy have attended all of the Planning Commission meetings where this project has been discussed. The plans have been discussed in terms of what the law is, what is right, what is appropriate, what is the effect on the community, and what is the effect on the neighbors. It has been discussed by the city staff and the plan has changed, resident’s concern have been addressed, city staff recommendations have been submitted and Mr. Watkin’s client has compromised on some changes. Not only has it been discussed, but it has been acted upon. This plan has been previously denied by the planning commission and this city council has sent it back to the planning commission for further consideration for this particular requestor on this particular request. What is in front of you tonight is not what you have seen before. At this point this is a straight rezone and all of the objections that have been raised as arbitrary and capricious deal with a request that has nothing to do with this rezone. What is in front of this body is the rezone and whether it is appropriate to rezone to C-2. Mr. McCurdy’s staff initially recommended denial of the PUD because it is not appropriate mechanism to do this; a simple rezone is what should be done. When accusations of Planning Commission being arbitrary and capricious is made, it is incredibly important that we stand up and recognize the devotion, work, intelligence, experience, and dedication that have been put into it by the city staff, planning commission and city council. It is inappropriate to raise those words to you. “I would advise that you not consider any assertion of arbitrary and capriciousness because it is not worth that. The only consideration is whether or not the rezone from A-1 to C-2 is appropriate. We will address whether or not a large scale is appropriate when it come back in or however they choose to present it. It may come back as a PUD and if it does, then we will address it in that way. We

just don't know yet. I want you to know that I am confident that you and your commissions and boards have not acted in any way arbitrarily and capriciously."

The Mayor asked, "Shall the ordinance pass?"
Roll call: Unanimous – Yes. ***The ordinance is adopted.***

The Mayor asked, "Shall the emergency clause pass?"
Roll call: Unanimous – Yes. ***The emergency clause is adopted.***

(Agenda Item #3)

ORD. #18-29 Rezone from R-O to C-2, 5800 W. Myers Ranch Boulevard, East Side of Dodson, 1200 feet South of Walton Blvd.

The ordinance was introduced by Kruger and read by title only by Hatfield.

Tom Oppenheim, of CEI Engineering, presented the rezoning request saying that the new owner of the property wants to develop the entire tract as commercial and the Planning Commission had unanimously recommended approval of the rezoning.

The Mayor asked, "Shall the ordinance pass?"
Roll call: Unanimous – Yes. ***The ordinance is adopted.***

The Mayor asked, "Shall the emergency clause pass?"
Roll call: Unanimous – Yes. ***The emergency clause is adopted.***

(Agenda Item #4)

ORD. #18-30 Rezone from C-3 to C-2, 5972 W. Myers Ranch Blvd., East Side of Dodson, 1200 feet South of Walton Blvd.

The ordinance was introduced by Kruger and read by title only by Hatfield.

Tom Oppenheim, of CEI Engineering, presented this rezoning request. The new owner wants to rezone it back to C-2 for future development and the Planning Commission had unanimously recommended approval of the rezoning.

The Mayor asked, “Shall the ordinance pass?”
Roll call: Unanimous – Yes. ***The ordinance is adopted.***

The Mayor asked, “Shall the emergency clause pass?”
Roll call: Unanimous – Yes. ***The emergency clause is adopted.***

APPOINTMENTS:

Mayor Hines announced his recommendation to appoint Amenda Fisher to the Parks and Recreation Commission; to replace Keith Westmorland, who resigned. Fisher’s term expires on December 31, 2018.

Approves the appointment of ***Amenda Fisher*** to the **Parks & Recreation Commission**; to replace Keith Westmorland, who resigned. Term will expire on December 31, 2018

Motion by Hayes, second by Kruger to approve the appointment of Amenda Fisher to the Parks Commission as recommended.
Voice vote: Unanimous – Yes. ***Motion carried.***

Mayor Hines also recommended the reappointment of Jim Tull to the Civil Service Commission, term to expire on April 1, 2024

Approves the reappointment of ***Jim Tull*** to the **Civil Service Commission**, term to expire on April 1, 2024

Motion by Hayes, second by Kruger to approve the reappointment of Jim Tull to the Civil Service Commission as recommended.
Voice vote: Unanimous – Yes. ***Motion carried.***

Councilmember Carmichael stated in regard to the Planning Commission, “I attend the Planning Commission meetings and appreciate the job that both the Planning Staff and Commissioners do. They are spending a lot of time on stuff that they have never seen before. It is hard work and they spend a lot of energy to look at projects and made decisions that comply with the comprehensive growth map. It is hard work trying to do the right thing. I appreciate the job they do.”

There being no further business, motion by Kruger, second by Wolf to adjourn the meeting. Meeting adjourned at 7:17 p.m.

ATTEST:

APPROVED:

Peggy David, City Clerk-Treasurer

C. Greg Hines, Mayor