



STEVE ZEGA
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WASHINGTON COUNTY, ARKANSAS
County Courthouse

March 30, 2016

Washington County Quorum Court
c/o Washington County Judge's Office
280 North College, Suite 500
Fayetteville, AR 72701

RE: County Attorney's Opinion No. 2016- 03, Application of County Land Use Ordinances and Regulations to the Proposed Reed Red Dirt Project near Winslow

Ladies and Gentlemen:

At the Quorum Court meeting on March 17, 2016, several of you asked me to answer the following question: "Is the County required to follow its own land use ordinances and regulations (those specifically pertaining to zoning and planning) with respect to the proposed Reed Red Dirt Project near Winslow?"

The answer to this question is, in my opinion, "No," with some qualifiers and caveats.

First, at the outset, I must note that despite several hours of research, I could not find any Arkansas case law, statutes, regulations or Attorney General's opinions directly addressing this issue. The closest AG's opinion is *Op. Ark. Att'y Gen.* 2003-345¹, dealing with the ability of local governments to assess impact fees and impose other land-use ordinances on other government entities. The AG opinion was requested by State Senator Gilbert Baker of Conway, and presumably dealt with the City of Conway's interaction with UCA. In any event, besides the fact that the opinion may now be of limited value in light of recent Arkansas Supreme Court precedent, the statutes dealing with municipal zoning (ARK. CODE ANN. § 14-56-412 and § 14-56-417) are somewhat different from the statutes authorizing county zoning. Specifically, this provision found in the municipal statute, is absent from the county code:

Referral to Planning Commission. After adoption and filing as provided of a plan, no public way, ground, or open space; public building or structure; publicly or privately

¹ This AG's opinion may be of limited persuasive value in light of *Washington Cty. v. Bd. Of Trustees of Univ. of Ark.*, 2016 Ark. 34 (2016)- the recent Arkansas Supreme Court opinion dealing with the ability of the County to assess and collect *ad valorem* taxes on University property held for non-public use. That opinion relied heavily on notions of sovereignty and the right of a government (in that case, the State) to declare itself immune from taxation. Having said that, the basis of the analysis- that is- that the statutes seem to subject government to its own rules in some fashion and in some instances, applies here.

owned public utility line or terminal or transportation line or terminal; or public development or redevelopment or renewal project shall be acquired, constructed, or authorized unless such a project, proposal, or development has been submitted to the commission for review, recommendation, and approval as to its conformity with the plan.

ARK. CODE ANN. § 14-56-412 (f)(1). However, there is something somewhat like it; the relevant statutes dealing with the specifics of county zoning and planning are found in ARK. CODE ANN. §§ 14-17-201 through 14-17-210. Specifically, in § 14-17-207, there are the following provisions:

(d) From and after the adoption by the court of the official county plan, no improvements shall be made or authorized and no property shall be acquired, or its acquisition authorized, by any county or public agency which has, or is likely to have, definite part in or relation to the official county plan unless the proposed location, character, and extent thereof shall have been submitted by the agency concerned to the board and a report and recommendation of the board thereon shall have been received. If the board fails to initiate deliberation on such improvement or acquisition within thirty (30) days after receipt thereof and to furnish in writing its report and recommendations upon a proposal within sixty (60) days thereafter, the agency may proceed without the report and recommendation.

(e) In case any such improvement, ground, building, structure, or property is given a location or extent which does not accord with the report and recommendations of the board, the county official, department, or any other public agency having charge of the location, authorization, acquisition, or construction of it shall file in the office of the board a statement of its or his or her reasons for the departure from the report and recommendation, and such statement shall be open to public inspection.

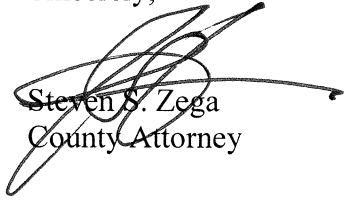
I interpret these paragraphs to mean the following: after the County adopted zoning and the Plan for Land Use and Development, (2006), if the County or a County agency intends to improve or undertakes to improve (and I think that clearly includes the red dirt project we are talking about here) real property outside a city, we are obligated to take the project to the County Planning Board and get a recommendation and report. The County is not bound by the recommendation and report, but if the County elects to proceed outside the recommendation and report, we must file a statement as to why we are proceeding that way.

I would be remiss if I did not mention that zoning in Arkansas is a purely legislative act (*Conway v. Housing Authority of Conway*, 266 Ark. 404 (1979)), and you have broad discretion, within constitutional bounds, to change the ordinance.

I invite your comments and questions.

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Sincerely,



Steven S. Zega
County Attorney

MARILYN EDWARDS
County Judge



JULIET RICHEY
Planning Director
Floodplain Administrator

WASHINGTON COUNTY, ARKANSAS
Planning Office

MEMO

Date: March 30, 2016
To: Steve Zega, County Attorney
From: Juliet Richey, County Planning Director
Re: Proposed policy for adherence with A.C.A. 14-17-207 in regard to Opinion 2016-03

The proposal for the "improvement...property acquired" shall be submitted to the Planning Department as per A.C.A. 14-17-207(d).

The Planning Department will review the project for general adherence to the adopted "Washington County: Plan for Land Use and Development," adopted by the Washington County Quorum Court November 9, 2006.

Planning Department staff shall prepare a report and recommendations for the proposal based on the "Washington County: Plan for Land Use and Development". The report will be submitted to the Planning Board for their review, deliberation, and ultimately their report and recommendations to the Quorum Court as per A.C.A. 14-17-207(d).

The County Plan calls for attention to similar issues (such as compatibility and safety) which staff usually evaluates for industrial uses such as red dirt pits or quarries. Therefore the Planning Department Staff Report will include evaluation of surrounding uses, buffering from neighboring property lines, sight distance evaluation at the entrance/exit of the site, etc. In addition, adherence to all applicable ADEQ regulations shall be required.