

AGENDA REQUEST FORM

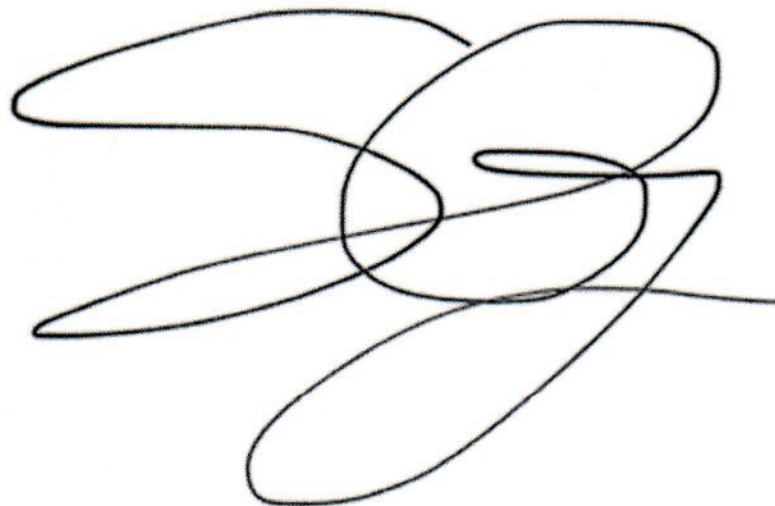
FOR: Council Meeting of April 6, 2021

FROM: Council Member Sonia Gutierrez

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO AMEND §166.04(B)(2)(a) *DEDICATION OF RIGHT-OF-WAY* OF THE *UNIFIED DEVELOPMENT CODE* BY ADDING THE POWER OF THE CITY COUNCIL TO GRANT A LESSER DEDICATION OF THE MASTER STREET PLAN RIGHT-OF-WAY REQUIREMENT FOR A LOT SPLIT


APPROVED FOR AGENDA:



3/16/21

Council Member Sonia Gutierrez

Date



City Attorney Kit Williams

March 16, 2021
Date



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE
CITY ATTORNEY

TO: **Mayor Jordan**
City Council

CC: **Susan Norton**, Chief of Staff
Jonathan Curth, Development Manager

FROM: **Kit Williams**, City Attorney

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal flourish extending to the right.

DATE: **March 18, 2021**

RE: **Lot Split Dedication Requirements Are Constitutionally Suspect**

The two appeals from the Unified Development Code's requirement that an owner who desires a lot split must dedicate street right-of-way even if not needed to serve the new lot are examples of why such required dedication for a lot split can be unfair, unreasonable and probably unconstitutional. Requiring dedications for a building permit for a non-assessed lot would be constitutional and would be more accurate in determining the amount of dedication that the City could require.

I am attaching my memo to the Mayor and City Council dated June 3, 2003 about constitutional problems for lot split dedication requirements. This eighteen year old analysis of lot split constitutional issues regarding required dedications is still good law. The two problem lot splits that the current Council must consider on April 6th highlight why the Unified Development Code's reliance on lot splits for required dedication of street right-of-way is problematic at best.

Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

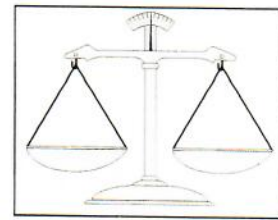
Jodi Batker
Paralegal

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY

DAVID WHITAKER, ASST. CITY ATTORNEY



LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody, Mayor**
City Council

FROM: **Kit Williams, City Attorney**

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal flourish extending to the right.

DATE: **June 3, 2003**

RE: **Lot Split and the "Rough Proportionality" test
for requiring dedication of land to the City**

Within the Unified Development Ordinance are requirements in which developers are required to spend money or dedicate land that becomes public property. A new residential subdivision builder is required to build the internal streets and sidewalks, install drainage, water and sewer mains, landscaping and parkland (or pay a monetary fee in lieu thereof). Then all of this infrastructure is dedicated free to the City for use of the public.

This is constitutional because all of these dedications and exactions are only needed because the new subdivision was built on undeveloped land and so what the City has required is "roughly proportionate" to the impact of the new subdivision on the City's existing infrastructure and the need to serve the citizens within the new subdivision.

According to the controlling Supreme Court decisions, the City can only require an owner to dedicate land or pay money in "rough

proportionality" to the impact that construction of his project causes the City. Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309, 2320.

"We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." Id.

As some Alderman may remember, I have long expressed concern over requiring land dedications (for widening street right-of-way, etc.) for simple lot splits. In my February 19, 2002 memo to you, I wrote:

"When someone actually constructs a building, at least some impact upon our infrastructure needs has occurred. The argument then becomes roughly how much is the cost of the impact to the City. **When only a lot split is approved, there is a real argument whether any impact at all has occurred. That is why I would recommend that lot splits only trigger necessary easements (water, sewer, utility, road) to serve the newly created lot.**" (emphasis added).

The whole rationale restricting the City's right to demand dedications of land or exactions is derived from the Fifth Amendment requirement that "just compensation" be paid for private land taken for public purposes.

"In addition to the requisite nexus, the (Supreme) Court went on to require that the city demonstrate that the degree of the exactions demanded in the condition bears "rough proportionality" to the

projected impact of the applicant's request. This requirement ensures that the conditioning of a discretionary benefit does not force 'some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole' in violation of the Just Compensation Clause." Pennell v. City of San Jose, 485 U.S. 1,9 (1998) (citations omitted); Goss v. City of Little Rock, 90 F.3rd 306, 309 (8th Cir. 1996).

In conclusion, I again request that lot splits not be used to demand more than the necessary easements to serve the newly created lots. Building permits which will cause some impact upon our infrastructure needs could justify right-of-way dedications as desired in our Master Street Plan.