

City of Fayetteville

433 Hay Street
Fayetteville, NC
28301-5537
(910) 433-1FAY (1329)

Meeting Agenda - Final City Council Special Meeting

Monday, June 29, 2020

4:00 PM

Council Chamber

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 PLEDGE OF ALLEGIANCE

4.0 APPROVAL OF AGENDA

5.0 OTHER ITEMS OF BUSINESS

5.01 City Council Agenda Item Request - Moratorium Request for Locks Creek Sub
Division - Council Member Ingram

5.02 City Council Agenda Item Request - Request removal of Market House image from all
City property.

6.0 ADJOURNMENT

COUNCIL MEETING WILL BE AIRED

Monday, June 29, 2020 @ 4 p.m.

Notice Under the Americans with Disabilities Act (ADA):

The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Human Relations at ynazar@ci.fay.nc.us, 910-433-1696, or the Office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 20-1440

Agenda Date: 6/29/2020

Version: 1

Status: Agenda Ready

In Control: City Council Special Meeting

File Type: Other Items of
Business

Agenda Number: 5.01

TO: Mayor and Members of City Council

THRU:

FROM: Council Member Ingram

DATE: June 29, 2020 - Special Meeting @ 4 p.m.

RE:

City Council Agenda Item Request - Moratorium Request for Locks Creek Sub
Division - Council Member Ingram

COUNCIL DISTRICT(S):

2

Relationship To Strategic Plan:

Executive Summary:

Background:

Issues/Analysis:

Budget Impact:

Options:

Recommended Action:

Attachments:

City Council Agenda Item Request



City Council Agenda Item Request

Date of Request: Monday, June 22, 2020 Requester: CM Ingram, District 2

Agenda Item Title: Moratorium Request for Locks Creek Sub Division

Estimated Cost: _____ Anticipated Funding Source: _____

City Department(s) Support Requested: Planning & Zoning Departments

Estimated Staff Time Required: _____

Anticipated Date for Future Council Work Session Discussion: As soon as possible.

Which City Council approved Goal(s) within the Strategic Plan does this request directly support?

Goal I: Safe and Secure Community

Goal III: High Quality Built Environment

What do you envision accomplishing with this agenda item request?

Locks Creek has experienced flooding not only in hurricane season, but in most rainy days. The residents have been actively applying for buyout programs where some will only get selected and those that don't get selected are not selected due to their financial status, but not fully equating to what their reality is. While the city does quick fixes and mitigation to the creek beds and drainage the city isn't capable of a buy out program, the state is.

Seeing that we do have the authority to restrict development in our city I find it fitting to place a moratorium on the Locks Creek Sub Division, I've spoken with residents and they feel that this should have been in place years ago.

G.S. 160A-381(e) allows a municipality to place a temporary moratorium on any city development approval required by law. Prior to enacting a moratorium, a municipality must first hold a public hearing. Moratoriums of 60 days or less require one published notice of the public hearing. Moratoriums of 61 or more days require two published notices of the public hearing. A moratorium ordinance must contain an express statement as to the need for the moratorium, its duration, its subject matter, and the municipality's plan for addressing the underlying problem necessitating the moratorium. The statute sets out certain development projects that are exempt from the moratorium. Persons aggrieved by imposition of a moratorium are authorized to seek injunctive relief in the General Court of Justice.

Additional Comments:

Land that is currently a swampy area in Locks Creek was listed for sale this week. From the resident's timeline the properties that are experiencing impact of flooding used to be small creeks before developers improperly developed the land. Improperly developed lots take major impact for how the properly developed lots were built.

Professor David Owens of the UNC School of Government has written an article<<https://canons.sog.unc.edu/can-we-hit-the-pause-button-on-development-approvals/>> addressing this topic.

Part 3. Zoning.

§ 160A-381. (Repealed effective January 1, 2021) Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. Except as provided in subsection (a1) of this section, a zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land. The ordinance shall provide density credits or severable development rights for dedicated rights of way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(a1) A zoning ordinance shall not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.

(b) Expired.

(b1) These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance.

(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Conditions and safeguards imposed under this subsection shall not include requirements for which the city does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the city, including, without limitation, taxes, impact fees, building design elements within the scope of subsection (h) of this section, driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities.

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law, except for the purpose of developing and adopting new or amended plans or ordinances as to residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may

not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the procedural requirements of this subsection.

(f) In order to encourage construction that uses sustainable design principles and to improve energy efficiency in buildings, a city may charge reduced building permit fees or provide partial rebates of building permit fees for buildings that are constructed or renovated using design principles that conform to or exceed one or more of the following certifications or ratings:

- (1) Leadership in Energy and Environmental Design (LEED) certification or higher rating under certification standards adopted by the U.S. Green Building Council.
- (2) A One Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative.
- (3) A certification or rating by another nationally recognized certification or rating system that is equivalent or greater than those listed in subdivisions (1) and (2) of this subsection.

(g) A zoning or unified development ordinance may not differentiate in terms of the regulations applicable to fraternities or sororities between those fraternities or sororities that are approved or recognized by a college or university and those that are not.

(h) Any zoning and development regulation ordinance relating to building design elements adopted under this Part, under Part 2 of this Article, or under any recommendation made under G.S. 160A-452(6)c. may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

- (1) The structures are located in an area designated as a local historic district pursuant to Part 3C of Article 19 of Chapter 160A of the General Statutes.
- (2) The structures are located in an area designated as a historic district on the National Register of Historic Places.
- (3) The structures are individually designated as local, State, or national historic landmarks.
- (4) The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.
- (5) Where the regulations are applied to manufactured housing in a manner consistent with G.S. 160A-383.1 and federal law.
- (6) Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district, special use district, conditional use district, or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160A-383 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan. For the purposes of this subsection, the phrase "building design elements" means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot; (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors; or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

(i) Nothing in subsection (h) of this section shall affect the validity or enforceability of private covenants or other contractual agreements among property owners relating to building design elements.

(j) Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate

of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the city may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required. (1923, c. 250, s. 1; C.S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1; 1981, c. 891, s. 5; 1985, c. 442, s. 1; 1987, c. 747, s. 11; 1995, c. 357, s. 1; 2005-426, s. 5(a); 2007-381, s. 2; 2011-286, s. 2; 2013-126, s. 4; 2013-413, s. 6(b); 2014-115, s. 17; 2015-86, s. 1; 2015-246, ss. 3.1(a), 4(b), 16; 2015-286, s. 1.8(b); 2019-111, ss. 1.12, 2.3; 2019-174, s. 3(b).)

Pamela Megill

From: Shakeyla M. Ingram
Sent: Wednesday, June 17, 2020 9:15 PM
To: City Council Members
Cc: Doug Hewett; Telly Whitfield; Angel Wright-Lanier; Pamela Megill; Jennifer Ayre
Subject: CM Request for Monday: Moratorium Request for Locks Creek Sub Division
Attachments: CM Agenda Request Form- CM IngramLocks Creek.pdf; GS_160A-381.pdf

Hi Council,

Please see the attached Council Member Request for Monday, June 22, 2020.

This is to request staff to research/place a Moratorium on the Locks Creek Sub Division.

Locks Creek has experienced flooding not only in hurricane season, but in most rainy days. The residents have been actively applying for buyout programs where some will only get selected and those that don't get selected are not selected due to their financial status, but not fully equating to what their reality is. While the city does quick fixes and mitigation to the creek beds and drainage the city isn't capable of a buyout program, the state is. **Locks Creek Flood Photos Dropbox Link:** <https://www.dropbox.com/sh/4zty1gh10hfh06g/AABAQjsz33Db4AKk-UGqBN1Xa?dl=0>

Seeing that we do have the authority to restrict development in our city I find it fitting to place a moratorium on the Locks Creek Sub Division, I've spoken with residents and they feel that this should have been in place years ago.

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Professor David Owens of the UNC School of Government has written an article<<https://canons.sog.unc.edu/can-we-hit-the-pause-button-on-development-approvals/>> addressing this topic.

Please call if you have any questions,

--

Shakeyla M. Ingram
Fayetteville City Council Member, District 2
Cell: 910.973.0256
E-mail: singram@ci.fay.nc.us

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 20-1441

Agenda Date: 6/29/2020

Version: 1

Status: Agenda Ready

In Control: City Council Special Meeting

File Type: Other Items of
Business

Agenda Number: 5.02

TO: Mayor and Members of City Council

THRU:

FROM: Mayor Mitch Colvin

DATE: June 29, 2020 - Special Meeting @ 4 p.m.

RE:

City Council Agenda Item Request - Request removal of Market House image
from all City property.

COUNCIL DISTRICT(S):

ALL

Relationship To Strategic Plan:

Executive Summary:

Background:

Issues/Analysis:

Budget Impact:

Options:

Recommended Action:

Attachments:

City Council Agenda Item Request

**City Council Agenda
Item Request**

Date of Request: _____ **Requester:** _____

Agenda Item Title: _____

Estimated Cost: _____ **Anticipated Funding Source:** _____

City Department(s) Support Requested: _____

Estimated Staff Time Required: _____

Anticipated Date for Future Council Work Session Discussion: _____

Which City Council approved Goal(s) within the Strategic Plan does this request directly support?

What do you envision accomplishing with this agenda item request?

Additional Comments: