



# Phillip Crego

*Jonesboro City Attorney*

**Carol M. Duncan**  
March 30, 2011  
**Assistant City Attorney**

**410 W. Washington**  
**Jonesboro, Arkansas 72401**  
**Phone 870-932-0917**  
**Fax 870-933-4628**

Mayor Harold Perrin

Re: Jonesboro Lawsuits

As you requested, here is list and status of all current outstanding civil cases for City of Jonesboro:

A condemnation was filed April 2, 2008 against Robert Walker, et al.. Answer filed by attorney Don Parker on 4-22-08; Case set for November, 2009. Case Continued. New Attorney hired, Larry J. Steele. Trial set for August, 2011.

A condemnation was filed April 2, 2008 against James and Donna Walker. Answer filed by attorney Don Parker April 22, 2008. Case set for November, 2009. Case continued. New Attorney hired, Larry J. Steele. Trial set for August, 2011.

A condemnation was filed June 17, 2010 against Mike Gleghorn. Attorney Robert Thompson filed Answer and Counterclaim for Temporary Restraining Order and Brief. A trial date on February 2, 2012 was moved by Judge Laser until August 2, 2011 because of inclement weather.

A Complaint for Injunction and Order of Abatement filed July 8, 2010 against Country Garden Apartments. Attorney Hunter Hanshaw filed Answer on July 30, 2010. Trial is set for March 23, 2011. Various other pleadings and motions have been filed since. A hearing was held on 13/15/11 in which the judge dismissed all of the defense's counterclaims against the City of Jonesboro. The judge gave them until April 13, 2011 to refile the counterclaims with more specific facts. No new hearing date is set at this time.

**Arkansas Public Entities Risk Management Association  
(APERMA)  
Legal Defense Group**

**RALPH C. OHM - GENERAL COUNSEL**

211 HOBSON AVENUE  
POST OFFICE BOX 1558  
HOT SPRINGS NATIONAL PARK, AR 71902-1558  
TELEPHONE 501-624-7555  
FACSIMILE 501-624-7575  
[RHOHM@HOBSONLAW.PC](mailto:RHOHM@HOBSONLAW.PC)

**C. BURT NEWELL**  
(501) 321-2222

**NICK R. WINDLE**  
(501) 624-7555

March 8, 2011

Honorable Harold Perrin  
Mayor of City of Jonesboro  
P.O. Box 1845  
Jonesboro, AR 72403-1845

Phillip Crego  
P.O. Box 1845  
Jonesboro, AR 72403-1845

Re: Jonesboro Lawsuits

Gentlemen:

As per your request, here is a current list and status of all of the current outstanding cases for the City of Jonesboro.

1. Rebecca Blankenship v. City of Jonesboro, AR      Craighead Co. Circuit No. CV-2009-481  
This cases involves and auto accident involving  
a police officer  
Suit filed June 9, 2009

We filed a Complaint on behalf of the City of Jonesboro against the driver, Deborah Blankenship, in January of 2009. The attorney for Rebecca Blankenship has also filed a Motion to Consolidate the two Complaints.

Trial set for February 2, 2010 was removed from docket at Plaintiff's request; concluding additional discovery requests from Plaintiff; Plaintiff would like to discuss settlement prospects.

2. Monica Brodie v. City of Jonesboro      Craighead County Circuit Case No. CV-2008-0913  
This case involves race and gender  
discrimination claims  
Suit filed December 12, 2008

Hearing on Defendant's Motion for Summary Judgment held on February 2, 2011; Court ruled in

Jonesboro's favor; proposed Order has been sent to Plaintiff's attorney; and will then be forwarded to Court for approval to dismiss Plaintiff's lawsuit. (order entered 3-25-11; Notice of Appeal filed same date)

3. Troy Coleman v. City of Jonesboro, AR Craighead Co. Circuit No. CV 2007-595  
This case alleges failure to rezone  
Suit filed September 6, 2007.

No activity since filing Jonesboro's Answer in September of 2007.

4. Harvey Edwards vs. City of Jonesboro Craighead Co. Circuit No. CV-2005-385-F  
This case alleges negligent operation of the landfill and permitting combustible gases to escape onto property.

Case tried and Jonesboro lost. Jonesboro offered to pay the judgment of \$387,500, plus tax refund of \$18,901.60 to Edwards' lawyer. Edwards appealed, but the appeal has been dismissed.

Plaintiff filed a Complaint and Amended Complaint in Federal Court in September of 2009; Jonesboro's Motion to Dismiss granted June 1, 2010; Plaintiff has appealed; Briefs have been filed; oral arguments heard on January 12, 2011 in St. Louis; no ruling by the Appeals Court yet.

Jonesboro should be holding the judgment amount to pay Edwards as soon as the federal case appeal is over.

5. King's Ranch of Jonesboro, Inc. v. City of Jonesboro, et al Craighead Co. Circuit No. CV-2008-0420

This case alleges denial of due process; zoning request denied. A group of citizens joined the suit as intervenors. Jonesboro prevailed at trial, Plaintiffs filed a Notice of Appeal on June 11, 2009; Briefs have been filed; oral arguments to be heard on March 10, 2011 in Little Rock (Decision reached - Trial Court reversed. Will have new trial)

King's Ranch of Jonesboro, Inc. v. City of Jonesboro USDC Case No. 3:10-cv-00096 (Federal)

King's Ranch represented by American Center for Law and Justice alleging violation of Fair Housing Act for failing to make reasonable accommodation in its zoning code; both parties have filed Motions for Summary Judgment currently pending before the Court. King's Ranch has offered to settle and Jonesboro must decide on this issue.

6. Reginald Prunty d/b/a/ En'Vision Nightclub of Jonesboro v. City of Jonesboro Craighead Circuit No. CV-2010-0892

Unlawful suspension to Operate Business/Nightclub; hearing was held on January 13, 2011 on Temporary Restraining Order; Amended Temporary Restraining Order issued; non-jury trial scheduled for June 28 & 29, 2011

7. Reginald Robinson, et al v. City of Jonesboro, et al Circuit Court Case No. CV-2010-191  
December 12, 2008 automobile accident involving City of Jonesboro PD

One-day jury trial set for September 7, 2011; in process of scheduling the depositions of the Plaintiffs

8. Charles H. Simmons v. City of Jonesboro, Arkansas, et al USDC Case No. 3:10-cv-00226

Plaintiff alleges was terminated motivated by race discrimination; jury trial scheduled for week of January 9, 2012

9. Ronald Worley and Meryl Worley vs. City of Jonesboro, et al. Craighead Co. Circuit No. CV-2005-421  
This lawsuit involves a drainage issue.

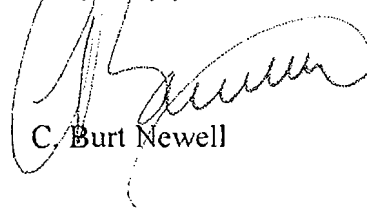
Jury trial on September 14 and 15, 2009; Order issued on December 4, 2009, denying Plaintiffs' claim for mandatory injunction; jury verdict in favor of Plaintiffs in the amount of \$15,000, plus interest at rate of 10% from date of entry of judgment; awaiting approval by the Court. Plaintiffs' filed another appeal; currently pending before the Court.

Jonesboro should be holding the \$15,000 necessary to pay their judgment.

If you have any questions or would like to discuss this matter, please feel free to contact me.

Best personal regards.

Very truly yours,



C. Burt Newell

CBN/mlr

Cite as 2011 Ark. 123

# SUPREME COURT OF ARKANSAS

No. 09-1311

KING'S RANCH OF JONESBORO, INC.  
APPELLANT

VS.

CITY OF JONESBORO,  
METROPOLITAN AREA PLANNING  
COMMISSION, KEN BEADLES,  
MARVIN DAY, BRIAN DOVER,  
LONNIE ROBERTS, JR., JERRY  
HALSEY, JR., MARGARET NORRIS,  
KEN COLLINS, JOE TOMLINSON AND  
PAUL HOELSCHER, IN THEIR  
OFFICIAL CAPACITIES AS  
COMMISSION MEMBERS

APPELLEES

STEVE AND SUSAN BAKER, MARK  
AND D.J. DUCKWORTH, HARRY  
AND BRENDA HERGET, DR. REVEL  
AND JANICE PORTER, JASON AND  
MELANIE RUNSICK, WAYNE AND  
MARTA RUSLEY-PARKER, MIKE AND  
TERRI HOOVER, MARK AND JULIA  
LAMAR, AND DR. JAMES AND SUZIE  
SCHRANTZ

INTERVENORS

Opinion Delivered March 31, 2011

APPEAL FROM THE CRAIGHEAD  
COUNTY CIRCUIT COURT,  
WESTERN DISTRICT, NO. CV08-336,  
HON. JOHNNY R. LINEBERGER,  
JUDGE,

REVERSED AND REMANDED.

---

**JIM HANNAH, Chief Justice**

King's Ranch of Jonesboro, Inc., appeals a decision of the Craighead County Circuit Court finding that there was a rational basis for the decision of the Jonesboro City Council

to deny a conditional-use permit sought by King's Ranch. On appeal, King's Ranch asserts that the circuit court erred in (1) finding there was a rational basis for the City Council to deny the conditional-use permit, (2) applying the rational basis standard of review when the review required was de novo, and (3) striking the amended complaint and motion to continue the trial. This case presents an issue of first impression regarding whether a municipality's decision granting or denying an application for conditional use under a zoning ordinance is a legislative or quasi-judicial act requiring a de novo review by the circuit court under Arkansas Code Annotated section 14-25-425 (Repl. 1998). We hold that a decision granting or denying an application for a conditional use is a quasi-judicial act. We reverse and remand this case for further proceedings consistent with this opinion. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(b)(1).

King's Ranch wished to establish and operate a group home for abused and neglected children in a 4900-square-foot home located on a ten and one-half acre tract of property within the City of Jonesboro. The proposed home would house up to eight children at a time. The tract is in a district zoned "R-1," a residential zone.

On January 16, 2008, King's Ranch submitted an application for a conditional-use permit to allow operation of the proposed home. The City of Jonesboro Metropolitan Area Planning Commission staff found that the proposed use was within the "conditional uses" as set out in the City of Jonesboro Zoning Ordinance ("Ordinance"). A hearing on the application was held before the City of Jonesboro Planning Commission on March 11, 2008.

The Commission denied the application, and King's Ranch appealed that decision to the Jonesboro City Council. A hearing was held before the Jonesboro City Council on May 20, 2008, and the application was again denied.

King's Ranch appealed the decision of the City Council to the circuit court. On November 5, 2008, the circuit court set a trial date of March 25, 2009. On March 3, 2009, King's Ranch filed an amended complaint. Citing Arkansas Rule of Civil Procedure 15(a), the circuit court granted a motion to strike the amended complaint based on likely prejudice and undue delay in stating the new causes of action.

This case was tried before the circuit court on March 25, 2009. King's Ranch alleged that the City Council's decision to grant or deny an application for a conditional-use permit was a quasi-judicial act entitled to a *de novo* review in the circuit court under Arkansas Code Annotated section 14-25-425. However, the circuit court found that the City Council's determination to deny the application for conditional-use permit was a legislative act rather than a quasi-judicial act. Therefore, in deciding whether the City Council had erred in denying the application, the circuit court applied the rational-basis standard of review. *See PH, LLC v. City of Conway*, 2009 Ark. 504, \_\_\_ S.W.3d \_\_\_ (party alleging a legislative act is arbitrary bears the burden of proving there is no rational basis for the legislative act). The circuit court found as follows:

The process available to, and exercised by the City of Jonesboro in its deciding the propriety and effect of the granting or denial of a conditional use permit is substantially similar to that of re-zoning because allowed changes permanently alter the nature and available use of the property.

We disagree. Under the provisions of the Ordinance, granting or denying a conditional-use permit is a decision reached by applying the facts to the provisions of the existing Ordinance. No new law was created, and it was not rezoning; it was execution of a law already in existence.

At issue is the Ordinance and its provisions regarding conditional use. Therefore, we are faced with an issue of statutory interpretation:

When reviewing issues of statutory interpretation, we are mindful that the first rule in considering the meaning and effect of a statute is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Cave City Nursing Home, Inc. v. Ark. Dep't of Human Servs.*, 351 Ark. 13, 89 S.W.3d 884 (2002). When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *Id.* A statute is ambiguous only where it is open to two or more constructions, or where it is of such obscure or doubtful meaning that reasonable minds might disagree or be uncertain as to its meaning. *Id.* When a statute is clear, however, it is given its plain meaning, and this court will not search for legislative intent; rather, that intent must be gathered from the plain meaning of the language. *Id.* This court is hesitant to interpret a legislative act in a manner contrary to its express language, unless it is clear that a drafting error or omission has circumvented legislative intent. *Id.*

*Ludwig v. Bella Casa, LLC*, 2010 Ark. 435, at 5–6, \_\_\_ S.W.3d \_\_\_, \_\_\_.

The City of Jonesboro enacted the Ordinance dividing the City into zoning districts. Jonesboro Code Ordin. (Ark.) § 117-6(a) (2010). Change to the provisions of the Ordinance is made by way of amendment, which may only revise the textual provisions or the boundary of a zoning district. Jonesboro Code Ordin. (Ark.) § 117-34 (2010). Further, where there is a change to the terms of the Ordinance by a permissible amendment, the amendment must be adopted by the City Council. *Id.* Thus, by adoption of an amendment, new law is added to the provisions of the Ordinance.



In *PH*, this court discussed zoning at length and stated that the “crucial test for determining what is legislative and what is administrative [quasi-judicial] is whether the ordinance is making a new law, or one executing a law already in existence.” *PH, LLC. v. City of Conway*, 2009 Ark. 504, at 7, \_\_\_ S.W.3d \_\_\_, \_\_\_ (quoting *Camden Cmty. Dev. Corp. v. Sutton*, 339 Ark. 368, 373, 5 S.W.3d 439, 442 (1999) (overruled in *PH*, 2009 Ark. 504, at 10, \_\_\_ S.W.3d \_\_\_, \_\_\_ to the extent it held that a zoning decision was an administrative rather than a legislative act)). Clearly, adoption of amendments under the Ordinance constitutes the creation of new law and is therefore a legislative act by the City Council.

Conditional uses are different. Under the Ordinance at issue, Article V.—Conditional Uses—sets out the process for obtaining a conditional-use permit. In granting or denying a conditional use permit, the city council is not amending any provisions to the Ordinance. Instead, an analysis is undertaken to determine whether the proposed conditional use complies with the already existing provisions of the Jonesboro Ordinance. When a conditional-use application is filed, eight factors set out in the Ordinance are considered by the Planning Commission, *see* Jonesboro Code Ordin. (Ark.) § 117-198 (a–h) (2010), and a decision must be made that includes findings of whether “the proposed use is within the provision of conditional uses as set out in this Ordinance,” *see* Jonesboro Code Ordin. (Ark.) § 117-198(a) (2010), whether the proposed use conforms to applicable provisions of the Ordinance, *see* Jonesboro Code Ordin. (Ark.) § 117-198(b), whether it is “not inconsistent with requirements of this Ordinance,” *see* Jonesboro Code Ordin. (Ark.) § 117-198(f), and whether it is in “in accordance with provisions of this Ordinance,” *see* Jonesboro Code Ordin. (Ark.) § 117-198

Cite as 2011 Ark. 123

(g) (2010). It is thus clear that a decision on a conditional-use application requires an application of the facts to the existing provisions of the Ordinance, and a judgment on whether the conditional use should be granted under the existing Ordinance provisions.

As this is an issue of first impression, there is no case on point. However, some cases should be noted because they contain references to issues now before this court. In *City of Jonesboro v. Vuncannon*, 310 Ark. 366, 371, 837 S.W.2d 286, 288 (1992), this court noted that Arkansas Code Annotated section 14-56-425 provides for a de novo review in circuit court where the issue is one of an application of zoning ordinances as opposed to enactment of zoning ordinances. At issue in the present case is the application of the Ordinance rather than enactment of new provisions to the Ordinance. In *Mings v. City of Ft. Smith*, 288 Ark. 42, 47, 701 S.W.2d 705, 708 (1986), in the context of a discussion of who has standing to appeal a decision from the board to the planning commission, this court stated that “[t]he majority tradition however, has been to treat the conditional-use request as invoking quasi-judicial powers of the planning commission and of the board.”

In the case before us, both the Planning Commission and the City Council were asked to apply the facts to the existing Ordinance provisions and to decide whether a conditional use should be granted. The provisions of the Ordinance were not amended by the decision on the conditional use; therefore, there was no legislative act. Rather, it was a quasi-judicial act based on an application of the facts to the existing Ordinance provisions. The circuit court erred in finding that the City Council’s action was a legislative act, and, therefore, also erred in applying the rational-basis standard of review.

Cite as 2011 Ark. 123

Because we hold that the circuit court applied the wrong standard of review, the question of whether the City Council acted in an arbitrary or capricious manner is moot. We do not address moot issues. *McDermott v. Sharp*, 371 Ark. 462, 466, 267 S.W.3d 582, 585 (2007). Further, because this case is being reversed and remanded for further proceedings, we need not address whether the circuit court erred in refusing to grant the motion to continue and in granting the motion to strike.

Reversed and remanded.