

Understanding Spot Zoning

by Robert C. Widner, Esq.

Most planning commissioners have heard the impassioned cry that a particular rezoning decision will constitute an invalid "spot zoning." This allegation typically arises where the community is considering the rezoning of a single lot or small parcel of property held by a single owner and the rezoning will permit land uses not available to the adjacent property.

Because spot zoning often focuses on the single parcel without considering the broader context, that is, the area and land uses surrounding the parcel, it is commonly considered the antithesis of planned zoning. While rezoning decisions that only affect a single parcel or small amount of land are most often the subject of spot zoning claims (as opposed to rezonings of larger areas), a locality can lawfully rezone a single parcel if its action is shown to be consistent with the community's land use policies. As I will discuss shortly, courts look to the community's comprehensive plan, or to other planning studies, in determining whether the rezoning is, in

fact, consistent with local land use policies.

Of course, whether a particular rezoning constitutes an unlawful spot zoning depends largely upon the facts surrounding the zoning decision and upon the judicial decisions of each

5. the relationship between the zoning change and the local government's stated land use policies and objectives.

This last factor -- the relationship of the rezoning decision to the community's land use policies and objectives -- is perhaps the most important one. As a result, when a planning commission (or governing body) initially considers a rezoning request it should determine whether the request is consistent with the comprehensive or master plan. Many communities' zoning codes also require a separate planning study that examines the merits of the proposed rezoning. This further ensures that any rezoning is consistent with the community's land use objectives, and not a case of spot zoning. The bottom line is that courts will give considerable weight to evidence that the locality's rezoning decision reflects thoughtful consideration of planning factors. See Sidebar, "Consistency With the Plan."

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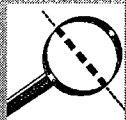
state. However, courts commonly note that the underlying question is whether the zoning decision advances the health, safety, and welfare of the community. A zoning decision that merely provides for individual benefit without a relationship to public benefit cannot be legally supported. Where a particular zoning decision is not supported by a public purpose, the zoning decision is arbitrary and may be subject to invalidation as unlawful spot zoning.

Although courts throughout the nation differ in their specific approaches when reviewing spot zoning claims, the majority consider:

1. the size of the parcel subject to rezoning;
2. the zoning both prior to and after the local government's decision;
3. the existing zoning and use of the adjacent properties;
4. the benefits and detriments to the landowner, neighboring property owners, and the community resulting from the rezoning; and

It should be noted that there is one situation where a rezoning decision that does not conform to the comprehensive plan may nevertheless be upheld. That is where there is evidence showing significant changes in the community since the adoption of the plan that would justify a rezoning of the property. This is especially true where a review of other factors, such as benefit to the community and size of the rezoned parcel, indicate that the rezoning was not merely intended to confer a benefit to the property owner.

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Consistency With the Plan

When a rezoning decision is in conformance with the municipal plan, courts will uphold the decision even though it may adversely affect surrounding land uses. For example, in *Pollock v. Zoning Board of Adjustment*, 342 A.2d 815 (1975) a Pennsylvania court upheld the rezoning from residential to commercial/industrial of a tract less than one acre in area which was surrounded on three sides by residentially zoned land. The parcel, however, fronted on a major boulevard, and, as the court noted, "the comprehensive plan for the city is to encourage commercial development along the properties fronting on the boulevard. The rezoning of the instant tract was but another action in conformity with that pattern of development."