

Understanding Spot Zoning

by *Daniel Shapiro, Esq.*

Editor's note: We're pleased to continue offering articles providing an overview of some of the key zoning and land use law issues planners and planning commissioners face. As with all such articles, we encourage you to consult with your municipal attorney as laws and legal practice vary from state to state.

Occasionally, planning boards or commissions are faced with a petitioner's request to re-zone property only to be challenged with an objector's claim that doing so would constitute illegal spot zoning. The plan commission often has a quandary; approve the development and risk making an improper, if not illegal decision, or deny the development which would have financially improved the community. To better assist with this difficult decision, it is beneficial for the commission to understand exactly what "spot zoning" is.

What Constitutes Spot Zoning

The "classic" definition of spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners."¹

Spot zoning is, in fact, often thought of as the very antithesis of plan zoning.² When considering spot zoning, courts will generally determine whether the zoning relates to the compatibility of the zoning of surrounding uses. Other factors may include; the characteristics of the land, the size of the parcel, and the degree of the "public benefit." Perhaps the most important criteria in determining spot zoning is the extent to which the disputed zoning is consistent with the municipality's comprehensive plan.

Counties and municipalities both adopt comprehensive plans for the purposes of stating their long term planning objectives, and addressing the needs of the community in one comprehensive document that can be referred to in making many zoning decisions over time.

Comprehensive plans also typically map out the types (and locations) of future land use patterns which the municipality (or county) would like see — again, these provide guidance for changes in the zoning ordinance and zoning district maps.

The key point: rezonings should be consistent with the policies and land use designations set out in the comprehensive plan.

Importantly, each claim of spot zoning must be considered based upon its own factual scenario. Indeed, some courts engage in a cost/benefit analysis to determine whether the challenged zoning is spot zoning.

For instance, in *Griswold v. Homer*,³ the Alaska Supreme Court found spot zoning to exist by considering a cost benefit analysis, as well as the size of the parcel in question and the rezoning in relationship to the comprehensive plan. Critically, it found that the spot zoning was absent because,

among other things, the underlying ordinance resulted in genuine benefits to the City of Homer as a whole, and not just to the particular land owner.

Although courts often find spot zoning where the challenged zone is surrounded by other incompatible zones, spot zoning is less likely to occur when the rezoning has “slopped over” by the extension of the perimeter of an existing zone to include the rezoned area.



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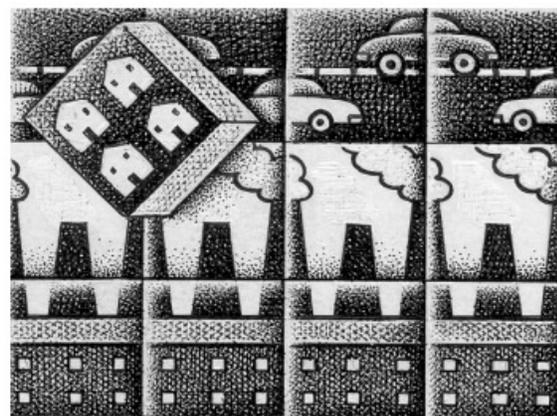


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Additionally, improper spot zoning is less likely when the

disputed area is characterized by mixed uses or transitional areas. In other words, spot zoning is more frequently found in residential than in commercial neighborhoods.

When holding that spot zoning is invalid, some courts will couch their ruling in in terms of substantive due process — in other words, that the rezoning was not “reasonably related” to a legitimate state interest. Other courts will frame a ruling upon equal protection principles.⁴

Regardless, when courts declare such rezoning invalid they must base their declaration on: (1) the lack of connection of the rezoning to a legitimate power or purpose; (2) the lack of the rezoning’s conformity to the comprehensive plan; or (3) the rezoning’s representing an unreasonable inequality in the treatment of similarly situated lands. See, e.g., *Hanna v. City of Chicago*⁵ (spot zoning occurs when a relatively small parcel or area is rezoned to a classification out of harmony with the comprehensive plan).

Rebutting Spot Zoning

Spot zoning, however, may be rebutted when the challenged zoning is found to be consistent with a municipality’s recent zoning trends in the area, not just with the present surrounding uses.⁶ To illustrate the importance that each factual scenario must be closely addressed, rather than merely labeled, it should be noted that one Illinois court found that the rezoning of small parcels inconsistent with the zoning of surrounding areas is not necessarily unlawful.⁷ The size of a parcel is just one factor to be considered in determining spot zoning.

A claim of spot zoning may also lack merit, for instance, when the zoning or planning regulations consider the boundaries of the property in dispute to contain a line of demarcation between zoning districts which would appropriately separate one zoning district from another.⁸

Most importantly though, if the zoning is enacted in accordance with a comprehensive plan, it is typically not “spot zoning.”²

What's a Planning Commission to Do?

When considering zoning map amendments, the planning commission or board must not only determine whether the petitioner has satisfactorily responded to the traditional standards in support of his or her application, but it should also closely scrutinize whether a potential exists for spot zoning. In doing so, the commission should look at the comprehensive plan and the surrounding uses to the property at issue.

While the commission is not qualified to make legal determinations of spot zoning, it is nonetheless the gatekeeper of identifying that such an issue may exist. It is therefore appropriate for the commission to defer its decision and consult with its municipal attorney *before* voting to approve the rezoning and referring it to the governing body for adoption.

Summing Up:

Spot zoning must be addressed upon the facts and circumstances of each case. As such, when faced with allegations of spot zoning, the courts will closely look at factors such as the size of the parcel; the anticipated public benefit; the consistency with the community's comprehensive plan; and the consistency with surrounding zoning, and uses, to make a determination of the validity of the rezoning.



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Dan represents a wide variety of private developers as well as governmental entities and advises his clients closely on issues of concern. As part of his practice, he has successfully presented legislative and administrative matters before plan commissions, zoning boards, and other village, city, and county bodies.

Dan also is an adjunct professor teaching land use at Kent Law School in Chicago, and is the Chairman of the Village of Deerfield (Illinois) Plan Commission.

Notes:

1. Anderson's American Law of Zoning, 4th Edition, § 5.12 (1995). [↗](#)
2. See, e.g., *Jones v Zoning Board of Adjustment of Township of Long Beach*, 32 N.J. Super 397, 108 A.2d 498, 502 (1954). [↗](#)
3. *Griswold v. Homer*, 926 P.2d 1015 (Alaska 1996) [↗](#)
4. See, e.g., *Rando v. Town of N. Attleborough*, 692 N.E.2d 544 (Mass. App. Ct. 1998). [↗](#)
5. *Hanna v. City of Chicago* 771 N.E.2d 13 (2002) [↗](#)
6. See e.g., *1350 Lakeshore Associates v. Casalino*, 352 Ill.App.3d 1027, 816 N.E.2d 675 (1st Dist. 2004). [↗](#)
7. See, e.g., *Goffinet v. County of Christian*, 65 Ill.2d 40 357 N.E.2d 442 (1976). [↗](#)
8. See, e.g., *LaSalle National Bank v. City of Highland Park*, 344 Ill.App.3d 259, 799 N.E.2d 781 (2nd Dist. 2003). [↗](#)
9. See, e.g., *Jones v. Zoning Board of Adjustment of Township of Long Beach*, 32 N.J. Super. 397, 108 A.2d 498, 502 (1954). [↗](#)

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