

ZONING AND LAND USE PLANNING

Spot Zoning Challenges Rarely Are Successful

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When a property owner or developer successfully obtains a zoning change for a particular parcel of land, neighbors or other community members or groups may challenge the decision in court on the basis that it amounted to improper “spot zoning.” Numerous court opinions over the years make it clear, however, that courts are reluctant to overturn a zoning amendment on that ground when it was well-reasoned and the product of careful consideration.

Spot Zoning

Spot zoning has been defined as 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 that property and to the detriment of other property

owners. See, e.g., *Matter of Daniels v. Van Voris*, 241 A.D.2d 796 (3d Dept. 1997). In evaluating a claim of spot zoning, courts typically consider a number of factors, including whether the rezoning was consistent with a comprehensive land use plan, whether it was compatible with surrounding uses, the likelihood of harm to surrounding properties, the availability and suitability of other parcels, and the recommendations of professional planning staff. See, e.g., *Matter of Save Our Forest Action Coalition v. City of Kingston*, 246 A.D.2d 217 (3d Dept. 1998).

Ultimately, however, the inquiry comes down to whether the change was something other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community. See, e.g., *Rodgers v. Village of Tarrytown*, 302 N.Y. 115 (1951).

Consider how this standard was applied by the Appellate Division, Third Department, in *Boyles v. Town*

Board of the Town of Bethlehem, 278 A.D.2d 688 (3d Dept. 2000).

The Assisted-Living Case

The case arose when CMI Senior Housing and Health Care, Inc., submitted an application to the town board of the upstate town of Bethlehem to rezone a 6.7-acre parcel of land in the town from Residence “A” District to Planned Commercial District to facilitate development of an assisted-living residence for senior citizens at that location. The town board, acting as lead agency for purposes of review under the New York State Environmental Quality Review Act (SEQRA), referred CMI’s application to the town planning board for a recommendation as to a determination of significance under SEQRA and the proposed zoning change.

The planning board met on a number of occasions to consider the specifics of CMI’s proposal. During these discussions, CMI agreed to scale down its proposal, reducing the number

of units proposed from 107 to 94, and submitted revised architectural renderings.

After reviewing the various submissions, the planning board voted to recommend that the property be rezoned from Residence "A" to Planned Commercial District and that a conditioned negative declaration be issued under SEQRA. Although various conditions were attached to the planning board's recommendation, the most significant conditioned the rezoning upon limiting future use of the site to an assisted-living residence for senior citizens as proposed by CMI. This particular condition was put in place to alleviate concerns that the rezoning could

established procedure, the town board again referred the application to the planning board for consideration. Following a public hearing and the submission of various materials addressing, among other things, parking and traffic issues, the planning board recommended that the town board approve the facility. The town board did so.

A lawsuit was filed against the town board seeking to declare the local law that rezoned the property void, contending, among other things, that the rezoning constituted "spot zoning."

The court granted summary judgment in favor of the town board. The plaintiffs appealed to the Third Department, which affirmed.

In its decision, the appellate court first restated the "well-settled principle" that zoning determinations "enjoy a strong presumption of validity, which can only be overcome by a showing that the decision to rezone was unreasonable and arbitrary." To that end, it continued, the burden was on the party attacking the zoning decision to overcome that presumption.

The Third Department then found it "readily apparent" that the town board had not engaged in illegal spot zoning. It explained that although the size of the property—6.7 acres—represented a "very small portion" of the surrounding properties zoned Residence "A," the size of the parcel alone was "not determinative." With respect to the issue of surrounding land use, it noted,

there was a mix of one and two-family residences and apartment complexes in the area, in addition to the town hall and town library. The Third Department pointed out that, in an effort to minimize the likelihood of harm to the surrounding properties, CMI had scaled down its initial proposal and made various changes to its architectural renderings.

The appellate court also pointed out that the rezoning was conditioned upon a restriction as to the future use of the site (which the New York Court of Appeals found permissible in *Collard v. Incorporated Village of Flower Hill*, 52 N.Y.2d 594 (1981)); that alternative sites had been considered and rejected (with the reasons adequately set forth); and that demographic studies and citizen comments demonstrated a need for the facility in the community.

Finally, the Third Department found, although the rezoning certainly benefited CMI, there was "no doubt" that the community at large benefitted, too.

In short, it concluded, the town board's decision to rezone the property was part of, and consistent with, a comprehensive plan (as gleaned from the town's zoning code, map, and land use management advisory committee plan) to serve the general welfare of the community and was not spot zoning.

Manufacturing Facility Case

The same result was reached in *Matter of Save Our Forest Action Coalition*

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permit various "undesirable" uses at that location should the CMI proposal fail to come to fruition.

The town board subsequently adopted the planning board's recommendation, issued a conditioned negative declaration pursuant to SEQRA, and, after holding a public hearing, adopted a local law rezoning the property to Planned Commercial District.

CMI subsequently submitted its application for building project approval and, in accordance with

v. City of Kingston, 246 A.D.2d 217 (3d Dept. 1998).

In this case, the Kingston Local Development Corporation (KLDC) and Huck International, a major employer in the Ulster County city of Kingston, cooperated in the selection of a 107-acre parcel for the development of Kingston Business Park as the site for Huck's proposed new manufacturing facility and possible future expansion to accommodate other businesses. After the filing of a generic environmental impact statement, environmental review, and the issuance of findings by the planning board, the city made its own findings and amended the zoning classification of the site to M-1 Light Manufacturing District.

A lawsuit challenged the actions of the city, KLDC, the planning board, and Kingston's mayor as arbitrary and capricious, contending, among other things, that the rezoning of the parcel constituted illegal spot zoning.

The court dismissed the action, and the Third Department affirmed.

In its decision, the appellate court found that the "primary motivation" for the zoning amendment was to support local economic development through retention of the city's largest employer and to reap associated economic and tax benefits in connection with the development of a business park. The appellate court noted that the rezoning decision had been made "after an extensive review process," including a consideration of

the impact on adjoining residential areas, consistency with existing zoning plans, environmental concerns, and the availability of other suitable sites.

Accordingly, it concluded, sufficient forethought had been given to the community's land use problems and there was a "reasonable relation" between the rezoning determination and the "worthwhile goal of improving the economic health of the community."

Commercial District Case

Finally, the Third Department rejected a spot zoning argument in *Matter of Citizens for Responsible Zoning v. Common Council of City of Albany*, 56 A.D.3d 1060 (3d Dept. 2008)—a case where the city did not even have a comprehensive plan.

Here, Thomas Burke, who leased a vacant 3.6-acre property from 41 Holland Avenue, LLC, asked the city of Albany to change its zoning from a commercial office district to a highway commercial district. The city council rezoned the property, and a lawsuit asserted that the council had engaged in illegal spot zoning. The court ultimately dismissed the petition, and the challengers appealed.

The Third Department ruled that the petitioners had not met their "heavy burden" to prove that the rezoning constituted illegal spot zoning. It acknowledged that the city did not have a formal comprehensive plan, but found that the proposed use of the property

for a pharmacy and restaurant was "consistent" with the McDonald's restaurant on the adjacent property, and a tavern and two hotels approved for the same block. The appellate court noted that the residences owned by the petitioners that were near the rezoned property were separated by a steep change in elevation covered in vegetation, blocking them from sight.

Under the circumstances, the Third Department concluded, the rezoning "was part of a thoroughly considered plan calculated to best serve the community," the approved use was not "totally different from that of the surrounding area," and the rezoning did not constitute spot zoning.

Conclusion

Spot zoning is the antithesis of planned zoning, and there certainly can be a rezoning that a court will decide amounts to spot zoning. As the cases highlighted in this column suggest, however, the likelihood of that occurring can be reduced by a careful process in which all parties are working for the benefit not just of the particular entity seeking the rezoning, but of the community as well.