COUNTY OF DUNN
MENOMONIE, WISCONSIN

NOTICE OF PUBLIC MEETING

In accordance with the provisions of Section 19.84, Wisconsin Statutes, notice is hereby given that a public meeting of the **Dunn County Planning, Resource, and Development Committee** and the **Land Conservation Committee** will be held on **Wednesday, November 6, 2024** at **8:30am** in **Room 54 at the Dunn County Government Center**, 3001 US HWY 12 East, Menomonie, Wisconsin. The building entrance for meetings is on the lower level of the Government Center and will be open 30 minutes ahead of the meeting start time. Items of business to be discussed or acted upon at this meeting are listed below. A video recording of the meeting will be available for subsequent viewing on the Dunn County YouTube channel at the following link:

https://www.youtube.com/@dunncounty1854

Members of the public who require assistance in accessing the meeting, please call (715) 231-6505. Upon reasonable notice, the County will make efforts to accommodate the needs of disabled individuals through sign language, interpreters, or other auxiliary aids. For additional information, or to request the service, contact the County Human Resources Manager at 715-232-2429 (Office), 715-232-1324 (FAX) or 715-231-6406 (TDD) or by writing to the Human Resources Manager, Human Resources Department, 3001 US HWY 12 E, Suite 225, Menomonie, Wisconsin 54751.

AGENDA

1. **Call to Order**
2. **Call of the Roll**
3. **Approval of the Minutes –** October 2, 2024
4. **Public Comments**
5. **Public Hearing:** None
6. **Staff Reports:** None
7. **Items placed at the request of the Chairperson:**
   - **A.** Review and discussion of how spot zoning considerations are applied in county zoning decisions
8. **Consideration of Actions to be taken by the Planning, Resource, and Development Committee:**
   - **A.** Review and take action on bids for Tax Foreclosed Property Sale
9. **Consideration of Actions to be taken by the Land Conservation Committee:**
   - **A.** Land and Water Conservation Board Election
10. **Consideration of reports, resolutions, and ordinances to the County Board from the Planning, Resource, and Development Committee:** None
11. **Announcements:**
12. **Future meeting date and any agenda items:** November 20, 2024
13. **Adjournment**

Tom Quinn, Chairperson

Signed: _____

Thomas P. Carlson
Dunn County Surveyor

COUNTY OF DUNN
MENOMONIE, WISCONSIN
MINUTES

Minutes of the Meeting of the Dunn County Planning, Resource, and Development and Land Conservation Committee.
Held on October 2, 2024, in the Government Center, Room 54.

DRAFT

1. **Call to Order.** There being a quorum of the Dunn County Planning, Resource, and Development and Land Conservation Committee, Chairperson Quinn called the meeting to order at 8:30 a.m.
2. **Call of the Roll.** Present were Tom Quinn (Chair), Gary Bjork, Mike Kneer, Diane Morehouse, and Monica Berrier.
3. **Approval of Minutes.** Supervisor Berrier made a motion to approve the minutes from the September 18, 2024 meeting. Seconded by Supervisor Morehouse. All in favor. Motion approved by voice vote.
4. **Public Comments.** None.
5. **Public Hearing.**
    A. **Application for Rezoning: Dunn County GA to GC**. Chairperson Quinn called the public hearing to order at 8:31 am. Anne Wodarczyk, Planner/ Zoning Administrator recapped the staff report for a change to zoning designation of County-owned property located at E3900 State Road 29 in the Town of Menomonie. Wodarczyk read a written statement from the Wisconsin Department of Transportation. Discussion by committee and Wodarczyk. Clinton Zack spoke on the request. Further discussion by committee. Public hearing closed at 8:51 am.
    B. **Application for Rezoning: Don Lentz GA to R1**. Chairperson Quinn called the public hearing to order at 8:51 am. Wodarczyk recapped the staff report for a change to zoning designation of a 6-acre property currently owned by Donald Lentz in the Town of Tainter. Discussion by committee and Wodarczyk. Donald Lentz, applicant spoke on the request. Linda Stoffel spoke on the request. Discussion by committee and staff. Public hearing closed at 9:15 am.

    Without objection, Chairperson Quinn moved to agenda item 10A and 10B.
    Consideration of reports, resolutions, and ordinances to the County Board from the Planning, Resource, and Development Committee:

A. **Application for Rezoning: Dunn County GA to GC.** Supervisor Kneer made a motion to postpone action until committee receives recommendation from the Town of Menomonie Planning Commission. Seconded by Supervisor Morehouse. All in favor. Motion approved by voice vote.
B. **Application for Rezoning: Don Lentz GA to R1.** Supervisor Morehouse made a motion to approve the rezone request from GA to R1 for Donald Lentz. Seconded by Supervisor Berrier. Discussion by committee. Supervisors Quinn, Morehouse, Berrier, and Kneer in favor. Supervisor Bjork opposed. Motion carried.

6. **Staff Reports:** None.
7. **Items placed at the request of the Chairperson:** None.
8. **Consideration of Actions to be taken by the Planning, Resource, and Development Committee.**
   A. **Determine if an existing sub-standard width access easement in the Town of Sand Creek is suitable to provide access for a proposed Certified Survey Map.** Tom Carlson, County Surveyor presented a recap of the subject parcel (part of Lot 1 of Certified Survey Map Number 2360) and the existing 33 foot wide access easement. Chris Jerome, representing Our Family LLP, spoke on the matter. Discussion by committee, Carlson, and Jerome. Supervisor Morehouse made a motion to maintain the existing easement. Seconded by Supervisor Berrier. All in favor. Motion carried.
   B. **Variance request in the Town of Menomonie to create a Certified Survey Map lot that is bisected by a proposed access easement.** Carlson presented a recap of the variance request staff report. Sarah Kinnard, applicant spoke on the request. Discussion by committee, Carlson, and Kinnard. Supervisor Berrier made a motion to approve the variance request. Seconded by Supervisor Morehouse. All in favor. Motion carried.
   C. **Variance request in the Town of Menomonie to create an access easement with a right-of-way width of less than 66 feet.** Carlson presented a recap of the variance request to create an access easement with a right-of-way width less than 66 feet concurrently with agenda item 8B. Sarah Kinnard, applicant spoke on the request. Discussion by committee, Carlson, and Kinnard. Supervisor Berrier made a motion to approve variance request as submitted. Seconded by Supervisor Kneer. Amendment by Supervisor Kneer to grant the variance request to create an access easement with a right-of-way width of less than 66 feet and at least 33 feet. Seconded by Supervisor Quinn. Discussion by committee and Carlson. All opposed to the amended motion. Motion failed. All in favor of original motion by Supervisor Berrier and Supervisor Kneer. Motion carried.
   D. **Cooperative Agreement with Beaver Creek Reserve as Designated Cooperative Agent for Lake Monitoring and Protection Network Grant.** Chase Cummings, County Conservationist recapped the 2025 Cooperative Agreement with Beaver Creek Reserve to address aquatic invasive species. Funds associated with this

agreement are valued at approximately $12,000. Supervisor Morehouse made a motion to approve the Cooperative Agreement with Beaver Creek Reserve. Seconded by Supervisor Bjork. All in favor. Motion carried.

9. **Consideration of Actions to be taken by the Land Conservation Committee:**
    A. **Approval of the 2025 Wildlife Damage Abatement & Claims Program Budget and participation in the Venison Donation Program.** Cummings introduced Alec Sundelius from USDA APHIS Wildlife Services. Sundelius recapped the budget for the Program and requested county participation in the Venison Donation Program. Supervisor Morehouse made a motion to approve the budget and participation. Seconded by Supervisor Kneer. All in favor. Motion carried.
10. **Consideration of reports, resolutions, and ordinances to the County Board from the Planning, Resource, and Development Committee:**
    A. **Application for Rezoning: Dunn County GA to GC.** Acted upon earlier in the meeting.
    B. **Application for Rezoning: Don Lentz GA to R1.** Acted upon earlier in the meeting.
11. **Announcements.** None.
12. **Future Meeting Date and any agenda items.** Next meeting date will be Wednesday, October 16, 2024.
13. **Adjournment.** There being no further business, Chairperson Quinn declared the meeting adjourned at 9:59 a.m.

Respectfully Submitted,
Lilly Glodowski
Recording Secretary

January 2004

Public Policy Brief

State & Local Government Area of Expertise Team

Removing Spot Zoning From the Fabric of Zoning Practice

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Without a doubt, few terms are uttered by both proponents and opponents of zoning actions more frequently than "spot zoning." Spot zoning stands alongside takings as one of the most frequently advanced, yet generally misunderstood concepts of planning and zoning law. In December 2003, the Michigan Court of Appeals revisited the spot zoning issue and attempted to harmonize two seemingly contradictory lines of cases.[1] This article will review the Michigan cases addressing spot zoning and provide guidance to land use decision-makers on how to remove spot zoning from the list of problematic land use issues. This guidance should be applied liberally to all areas of your community; no need to pre-test on a small, inconspicuous area.

The Problem with Simplicity

The one-sentence definition of spot zoning most frequently cited by Michigan courts was first stated in *Penning v. Owens:*[2]

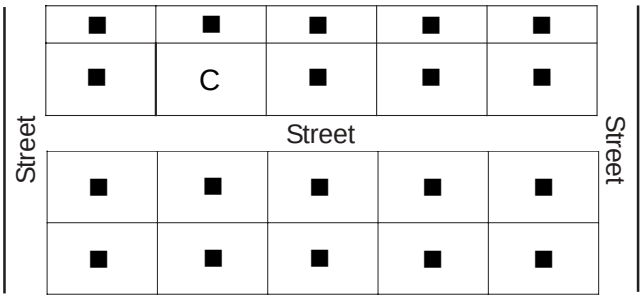
> "A zoning ordinance or amendment…creating a small zone of inconsistent use within a larger zone is commonly designated as spot zoning."

The site plan at the right (Fig. 1) provides a visual description of this one-sentence definition.

Parcel "C" has been rezoned commercial. The surrounding uses (and zoning) is residential. The one-sentence definition supplied by the court in *Penning* implies a purely spatial, neighborhood character-type of analysis, and would indicate that the rezoning of Parcel C is illegal. Clearly, commercial zoning is out of place in this context.

The definition found in *Penning* is simple and easily conceptualized. It is also the source of much of the misunderstanding surrounding the spot zoning issue. If the analysis actually ended with this single sentence, many neighborhood commercial uses or downtown apartments could be characterized as illegal spot zoning. Commercial zoning to accommodate uses that predate an area's residential development also would be illegal, and mixed use developments and cluster zoning would be more difficult to implement. An island of inconsistent use on a zoning map creates a suspicion by the casual observer that a landowner is being singled out for favorable treatment, but to fully understand whether a small zone of inconsistent use is actually contrary to law we must dig deeper.

Fig. 1 - Site Plan



MICHIGAN STATE UNIVERSITY EXTENSION

Spot Zoning in Other States

Other state courts have adopted varying definitions of spot zoning. Some of these definitions are useful starting point for the discussion of spot zoning in Michigan because they focus more on an analysis of the problems associated with spot zoning than simply on a description of the zoning map. For example, the state courts of Texas have recognized that simply looking at the state of the zoning map, without further analysis, is insufficient. In *Burkett v. City of Texarkana*,[3] the Texas Sixth District Court of Appeals observed:

> "It has frequently been said that *spot zoning* is arbitrary and void. However, the term is not a word of art, rather it is descriptive of the process of singling out a small parcel of land for a use classification different and inconsistent with that of the surrounding area, for the benefit of the owner of such property and to the detriment of the rights of other property owners."

Texas courts imply improper motives are the root of evil in spot zoning. To find illegal spot zoning they look not only at the neighborhood, but also make an analysis of whether preferential benefits resulted for one, or a small number of landowners. The Texas Supreme Court has viewed spot zoning as "preferential treatment which defeats a pre-established comprehensive plan. It is piecemeal zoning, the antithesis of planned zoning."[4]

Massachusetts courts take a slightly different approach. To determine whether illegal spot zoning exists, Massachusetts courts apply a balancing test that weighs the benefits *to the public* of spot zoning against its detrimental effects on neighboring landowners.[5] In Massachusetts, then, a small parcel of inconsistent use that confers benefits to the owner of the parcel could be upheld, so long as the public benefits as well, and to a greater degree than that to which neighboring landowners are harmed.

Washington state courts have emphasized the importance of comprehensive plans and land use regulations by adopted what has come to be known as the "change-mistake rule" for assessing the validity of all zoning amendments, including spot zoning situations. The rule holds that a court will uphold a zoning map amendment only if it is based on a change in conditions in the surrounding neighborhood since the zoning was adopted, or a mistake in the original zoning classification.[6] An exception exists if, regardless of consistency with neighborhood character, the rezoning brings the zoning into line with the comprehensive plan. The change-mistake rule shifts the burden of proof to the proponent of the zoning change. This rule obviously makes it more difficult for an individual landowner to secure a change in zoning that is inconsistent with neighborhood character. It also disregards the inquiry into motives and favorable treatment that can be difficult to prove in administrative or judicial proceedings. It is worth noting that comprehensive planning is mandated by Washington state statute, and that zoning must be consistent with the plan.

The Real Criteria for Spot Zoning in Michigan

Why this recitation of case law from other states? The reality is that Michigan courts implicitly have employed, at various times in various cases, many of the criteria found in these cases from other states in deciding spot zoning questions here. Michigan courts, in fact, do not stop with the one-sentence definition from *Penning*. The courts will weigh all the "facts and circumstances"[7] of a case in deciding the validity of an isolated zoning amendment. The trick is to distill from the fifteen or so Michigan appellate court decisions on spot zoning what the courts *really* consider to be the important facts and circumstances. A breakdown of these considerations follows.

Important Considerations

Zoning presumed valid. Michigan courts have sent mixed messages on whether the presumption of validity afforded to communities on other zoning matters can be relied on with the same confidence when spot zoning is asserted in a challenge to a decision. *Brae Burn v. Bloomfield Hills*[8] is the most frequently cited case for the proposition that "the zoning ordinance is clothed with the presumption of validity, and it is the burden of the party attacking the

ordinance to prove affirmatively that it is arbitrary and reasonable." Courts have cited this language in spot zoning cases.[9] The courts have also noted that this presumption is strengthened by the existence of a formally adopted master plan.[10] However, the appellate courts also occasionally have been led astray by language from *Penning* that seems to place the burden on the zoning authority. Immediately after stating the one-sentence definition of spot zoning set forth above, the *Penning* court went on to say:

> "Such an ordinance is closely scrutinized by a court and *sustained only when the facts and circumstances indicate a valid exercise of the zoning power.*"[11] [emphasis added].

Subsequent spot zoning cases cited with approval this language from *Penning* and seemed to require municipalities to affirmatively prove the reasonableness of their zoning decisions in spot zoning cases in order for them to be upheld.[12]

In *Essexville* the Court of Appeals squarely faced the question of the presumption of validity of spot zoning decisions. After a lengthy review of the relevant cases, the Court of Appeals concluded that, in fact, *Penning* and *Anderson* say the same thing as *Brae Burn* concerning the presumption of validity:

> "In neither *Penning* nor *Anderson* did the courts disavow the deferential standard of review forcefully declared in *Brae Burn* and other cases. Moreover, both *Penning* and *Anderson* denounced 'haphazard,' 'piecemeal' zoning decisions that were contrary to existing zoning plans, which is consistent with the reasonable and arbitrary' test set forth in *Brae Burn* and other cases."[13]

Essexville, then, should clear up any questions about whether the burden of proof shifts in spot zoning cases. Land use decision-makers should take comfort in the knowledge that the presumption of validity accompanies their decisions, even when spot zoning is alleged.

"Small zone..." The first part of the *Penning* definition focuses on the geographic size of the parcel in question. An examination of other cases shows that size is relative. In *Raabe v. City of Walker,*[14] the Michigan Supreme Court determined that rezoning a 180-acre tract of land to heavy industry, when surrounding uses were predominantly agricultural, constituted spot zoning. Similarly, in *Trenton Development Co. v. Trenton Village,*[15] the zoning of a three-block area for duplexes was considered spot zoning when the surrounding neighborhood was zoned multi-family. Perhaps it is more accurate to say that size matters when the parcel in question is *comparatively* small relative to the surrounding area.

Single Parcel or Landowner. The vast majority of spot zoning cases involve a single parcel or landowner. *Essexville* confirmed that rezoning a single parcel owned by a single landowner to an inconsistent use, standing alone, is an insufficient legal basis upon which to conclude that illegal spot zoning has taken place. This conclusion makes perfect sense in the big-picture of zoning practice, for the vast majority of rezoning requests are made by a single landowner for a single parcel. This is not a unique identifier of spot zoning. However, it is a factor that will raise a red flag for the courts if it is accompanied by the other listed considerations.

"Inconsistent use." The character of the area has appeared in various cases as an important consideration, particularly when the municipality cannot point to a master plan or "plan of zoning" to justify rezoning to an inconsistent use. In *Raabe v. City of Walker,*[16] the court specifically noted that a decision "purposed toward contradictory rezoning, after years of original zoning upon which concerned persons have come to depend" is substantially weakened by the absence of a master plan that justifies the change in policy. In *Michaels v. Village of Franklin*[17]*,* the refusal to rezone a parcel to commercial, when all surrounding uses were commercial, was found to be unreasonable.

It is worth noting that *Raabe* cites, with approval, a Maryland case that utilized the change-mistake rule in saying that a rezoning is appropriate "only when there was some mistake in the original zoning, or when there are genuine changes in the character of the neighborhood." *Penning* also calls on the change-

mistake rule in deciding against the rezoning. According to Clan Crawford, the change-mistake rule has not been consistently followed in other Michigan cases.[18] In communities without master plans, then, the red flag should go up when a proposed rezoning would be particularly out-of-character with its surrounding uses.

Purpose and motive. As stated above, the vast majority of spot zoning cases involve a single parcel or landowner. This would seem to imply that one of the concerns surrounding spot zoning is favorable treatment of a single individual. The cases, however, never articulate this concern. The courts tend to focus instead on the inconsistency of land uses resulting from spot zoning. Several cases have used language similar to that found in *Anderson*, that

> "The legislative intention in authorizing comprehensive zoning is reasonable uniformity within districts having the same general characteristics and not the marking off, for peculiar uses or restrictions of small districts essentially similar to the general area in which they are situated."[19]

Essexville, however, raises the possibility that *unfavorable* treatment of a single individual by the city could be illegal if the city's motives are improper. In *Essexville* the landowner asserted that his land was placed in a zone permitting parks and recreational uses, when the vast majority of the surrounding land was industrial, in order to depress the property value for later acquisition by the city for public parkland. The Court of Appeals remanded *Essexville* to the trial court to take further evidence on this issue. Likewise, the court in *Michaels* considered the possibility (without deciding the specific question) that the village was refusing plaintiff's rezoning request in order to depress the market value for eventual purchase.

In many of the cases when the public derides a particular decision as spot zoning, the public is really voicing a belief that "something fishy is going on here." The courts, however, seem more concerned with consistency in land uses. Absent a showing of actual fraud, a legal challenge solely on the basis of improper motive is not likely to succeed if the decision is supported by the master plan.

Key Consideration: Consistency With Plans

The *Essexville* decision confirms that consistency with the plan is probably the most critical factor a court will consider today in deciding whether a "small zone of inconsistent use" constitutes illegal spot zoning. The court placed heavy reliance on the fact that the ordinance was based on a reasonable development plan "and constituted the elected representative's decision regarding how the city landscape…should be developed in the future."
The existence (or absence) of a master plan has essentially decided the outcome of several spot zoning cases. In *Essexville,* for example, the court upheld the city's creation of an essentially small (4.37 acres) and isolated nonindustrial district in the middle of industrial uses because the plan called for greater recreational riverfront access. In *Raabe* the court overturned the rezoning of a 180-acre parcel to industrial from agricultural because it was not part of any general plan. In *Penning* the court overturned the rezoning of a small parcel to commercial from residential, even though it neighbored an existing commercial use that predated the ordinance, because the rezoning was "inconsistent with the basic plan of zoning."

These cases bring to light another important point. The astute reader will have noticed that the courts have not always articulated (or even recognized) the distinction between the terms "master plan" and "the basic plan of zoning." However, the parties to spot zoning litigation know the difference, and use those differences to their respective advantage. The master plan is usually used to justify a rezoning, while "the basic plan of zoning" will more than likely be used to overturn a rezoning. The master plan text and map are the instruments for articulating a change in land use policy. In contrast, a municipality generally cannot find justification for a change in policy in the very document (the ordinance) the municipality is trying to amend. The single best piece of advice for local governments in the general arena of land use is also the best advice for avoiding spot zoning problems: *Make plans. Make decisions that are consistent with plans*.

Is Spot Zoning Really Different?

This was really the central question addressed by *Essexville.* The court felt it necessary to decide "whether the *Penning* and *Anderson* cases contain separate zoning principles apart from those set forth in *Brae Burn*..., and if so, which line of cases controls."[20] In other words, are the facts and circumstances of spot zoning cases so different from other zoning cases that they warrant a separate set of rules? The ultimate response of the Court of Appeals was a qualified "no." The Court read *Pinning* to be consistent with *Brae Burn* in giving local zoning decisions the presumption of validity. However, it went on to say:

> "But, when a discrete zoning decision is made regarding a particular parcel of property – typically a decision involving an amendment or variance that results in allowing uses for specific land that are inconsistent with the overall plan as established by the ordinance – the courts will apply greater scrutiny. Those isolated or discrete decisions are more prone to arbitrariness because they are micro in nature, i.e., the decisions are based on the particular land and circumstance at issue in the request for amendment or variance."

Much of the confusion and misunderstanding surrounding spot zoning over the years has come about because of the belief that "small zones of inconsistent use" described the complete legal test for spot zoning (in the words of Texas courts, treating spot zoning as a "term of art,") rather than the set of facts in a particular situation. *Essexville* provides land use decision-makers with a holding that takes us beyond a one-sentence legal standard for spot zoning. It emphasizes that a small zone of inconsistent use deserves "greater scrutiny" (the qualifier), but that a court must still look at the overall reasonableness of the governmental interest being advanced, consistent with *Brae Burn*, *Kropf* and other key Michigan zoning decisions.

Summary and Checklist

Spot zoning does describe a situation that, by its very nature, draws closer scrutiny to the actions of the zoning authority; however, rather than define different rules for determining the legality of a particular spot zoning situation, a more appropriate approach is to analyze such cases under traditional analyzes of zoning validity. If you are charged with making land use decision on behalf of your community and a claim of spot zoning is raised, you should run though the following list of considerations:

- ✓ Is the "spot" in question small and discrete compared to the surrounding area?
- ✓ Does the "spot" involves one landowner or one parcel?
- ✓ Is the "spot," whether on the map as initially adopted or a request for rezoning, a use inconsistent with surrounding uses or the surrounding zoning?

If some or all of these characteristics are present the court will give "greater scrutiny" to the decision of your local government. You should then consider how you would be able to answer the following questions related to the requested use:

1) Is the requested use consistent with your master plan map? Does the plan's text present justifications for this use in this location?
2) In the absence of a master plan, does the requested use make sense in light of "the overall plan of zoning?"
   i) Can your community articulate a reasonable basis for the requested use in the requested location?
   ii) Can your zoning accommodate the request through a special use permit or PUD?
3) Would the *denial* of the request (i.e., refusal to create a "spot") preclude the property's use for any purposes to which it is reasonably adapted?

If you can answer “yes” to (1) or (2), and “no” to (3) then you have successfully removed any legitimate claim of illegal spot zoning.

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[1] *City of Essexville v. Carrollton Concrete Mix, Inc.,* ___Mich. App. ___, 2003 WL22494267 (2003). See case summary on page ****
[2] 340 Mich. 355, 65 N.W.2d 831 (1954).
[3] 500 S.W.2d 242 (Tex. App. 1973)
[4] *Thompson v. City of Palestine*, 510 S.W.2d 579, 582 (Tex.1974).
[5] *Rando v. Town of North Attleboro*, 692 N.E.2d 544 (Mass. App. 1998).
[6] *SORE v. Snohomish,* 99 Wash. 2d 363, 662 P.2d 816 (1983).
[7] *Penning,* 340 Mich. 355 at 367.
[8] 350 Mich. 425, 86 N.W.2d 166 (1957). See also *Kropf v. Sterling Heights,* 391 Mich. 139, 215 N.W.2d 179 (1974)
[9] See *Lanphear v. Antwerp Township,* 50 Mich.App. 641, 214 N.W.2d 66 (1973); *Bruni v. Farmington Hills,* 96 Mich.App. 664, 293 N.W.2d 609 (1980).
[10] *Biske v. Troy*, 81 Mich. 611, 166 N.W.2d 453 (1969).
[11] 340 Mich. 355 at 367.
[12] See, e.g. *SBS Builders v. Madison Heights,* 389 Mich. 323, 206 N.W.2d 437 (1973); See also *Anderson v. Highland Township,* 21 Mich.App. 64, 174 N.W.2d 909 (1969).
[13] Id., at 6.
[14] 383 Mich. 165, 174 N.W.2d 789 (1970).
[15] 345 Mich. 353, 75 N.W.2d 814 (1956).
[16] 383 Mich. 165, 174 N.W.2d 789 (1970).
[17] 58 Mich.App. 665, 230 N.W.2d 273 (1975)
[18] Crawford (1988). *Michigan Zoning and Planning (3rd ed.).* Ann Arbor: Institute of Continuing Legal Education, p. 87.
[19] *Anderson*, 21 Mich.App. 64 at 75.
[20] *Essexville*, WL22494267 at p. 3.

Public Policy Brief: Contacts

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Bringing Knowledge to Life!

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.

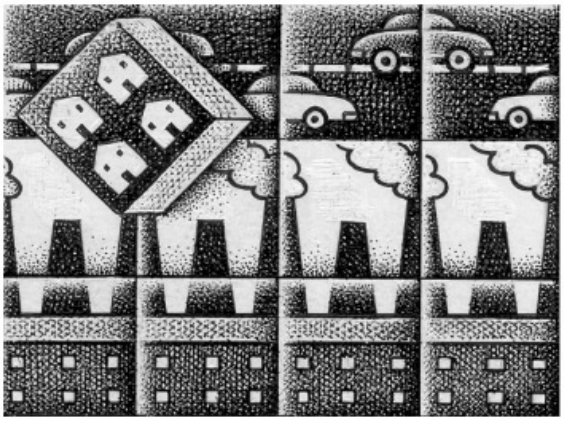

illustration by Paul Hoffman for PlannersWeb

illustration by Paul Hoffman for PlannersWeb

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." [9]

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.

Dan Shapiro is a partner with the law firm of Robbins, Salomon and Patt, Ltd in Chicago, Illinois. He practices in the areas of land use, zoning, governmental relations, municipal law, and civil litigation.

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).

Tags:Land Use Law, Zoning & Land Use Regulations

BIDS RECEIVED FOR 2024 LAND SALE

***Parcel 24-01 PIN: 17028-2-311134-230-0001 Minimum Bid $135,000**

1 Bid

$ 140,000 Danael Kluver

Land Conservation Committee Meeting – 11/06/2024

Agenda Item: 9.A. Land and Water Conservation Board Election

Dunn County is a member of the Wisconsin Land and Water Conservation Association (WI Land+Water). This association serves all County Land Conservation Committee members and Land Conservation staff. More information about the organization can be found here: https://wisconsinlandwater.org/about-us.

The Land and Water Conservation Board (LWCB) connects local and state governments on conservation and farmland preservation issues. The board:

- Reviews county land and water plans and makes recommendations
- Recommends how the Department of Agriculture, Trade and Consumer Protection should allocate conservation funds to counties
- Provides a forum to discuss emerging soil and water conservation issues

More information on the state LWCB can be found here:
https://datcp.wi.gov/Pages/About_Us/LandWaterConservationBoard.aspx

A new process is underway and WI Land+Water is conducting state LWCB elections this fall, as opposed to having held them this past March. This change is due to the timelines of our LWCB elections not aligning well with the actual term served by our LWCB representatives. As a reminder, in even-numbered years, WI Land+Water elects three Land Conservation Committee (LCC) members to serve on the state LWCB. This authority is statutorily granted to WI Land+Water via Wis. Stats 15.135(4)(b)2,

Five area associations of WI Land+Water have nominated a candidate, and the election will take place via electronic voting. A ballot was emailed to each county conservationist on Monday, October 21, with instructions on the process and a request to gather input at their next LCC meeting or determine the best way to do so before submitting their county's vote by **Friday, December 13, 2024 at 5:00 pm.** There is one ballot per county, and every county votes for three candidates. The election will be administered in such a way that each county is allowed one unique vote that must be submitted by the person who the ballot was sent to (the county conservationist). Upon submission of each county's ballot, a ballot receipt with a unique ID number and timestamp will be provided for record keeping.

Each candidate submitted a biography and recorded a speech which can be found on the WI Land+Water website to view at the upcoming LCC meeting and/or at your own convenience. You can find them here: https://wisconsinlandwater.org/members-hub/lwcb/elections

Winning LWCD candidates will be announced in December and will begin their two-year term of LWCB service in January 2025.