Attachment A

MEMORANDUM

TO: Sherri Sirwaitis, Case Manager
Planning and Zoning Department

CC: Vincent Huebinger
Vincent Gerard & Associates, Inc

A. Lee Austin, P.E.
Austin Transportation Department

FROM: Natalia Rodriguez, Transportation Planner II
Scott A. James, P.E., PTOE
Development Services Department

DATE: March 13, 2017

SUBJECT: Neighborhood Traffic Analysis for Pioneer at Walnut Creek
Zoning Case # C14-2016-0134

PROJECT DESCRIPTION

The transportation section has performed a Neighborhood Traffic Impact Analysis for the above referenced case. The 16.45 - acre tract is located in north east Austin, north of HWY 290, east of the Dessau Road, south of East Parmer Lane, and west of Harris Branch Parkway. The zoning application proposes to zone the property from I-RR to MF-2 zoning with up to 248 multi-family residential units. The site is surrounded by residential land uses to the north, south, east, and west.

The neighborhood traffic analysis was required because the projected number of vehicle trips generated by the project exceeds the vehicle trips per day generated by existing uses by at least 300 trips per day, and the project has access to a residential collector street where at least 50 percent of the site frontage to the north of this project is an SF-5 or more restrictive zoning designation (c.f. Land Development Code, Section 25 – 6 – 114C).

ROADWAYS

Sprinkle Cutoff Road is classified as a residential collector roadway, connecting Sprinkle Road to the south and Braker Lane to the north. Sprinkle Cutoff Road will serve as the only point of access for the proposed zoning application site. The roadway currently has approximately twenty-four (24) feet of pavement within sixty (60) feet of right-of-way.

TRIP GENERATION

The zoning application proposes up to 248 multi-family (low-rise) dwelling units. The Neighborhood Traffic Analysis trip estimation is based on the Institute of Transportation Engineer's publication Trip Generation Manual, 9th Edition (Land Use Code 221). The estimated number of daily trips from 248 multi-family (low-rise) apartments is 1,657 trips. These estimated trips are summarized in Table 1 below.

Table 1 – Trip Generation Estimates		
Zoning	Intensity	Estimated Trips
MF-2	248 DU (low-rise)	1,657 vpd

TRAFFIC COUNTS AND ANALYSIS

According to the traffic data collected during the week of January 30, 2017, the average daily volume to the north of the site on Sprinkle Cutoff Road is 3,233 total vehicle trips. As shown in Table 3 below, the projected daily trips resulting from the site development would increase the observed volume on Sprinkle Cutoff Road by approximately 51.2%.

Table 3: Traffic Estimation			
Roadway	Existing Traffic	Site Traffic	Site + Existing Traffic
Sprinkle Cutoff Road	3,233 vpd	1,657 vpd	**4,890 vpd**

DESIRABLE OPERATING LEVEL

According to Section 25 – 6 – 116 of the Land Development Code, residential local or collector streets are operating at a desirable level if the daily volumes do not exceed the following thresholds as shown in Table 4:

Table 4: Desirable Operating Levels	
Pavement Width	Vehicles Per Day
Less than 30'	1,200
30' to less than 40'	1,800
40' or wider	4,000

CONCLUSION

Sprinkle Cutoff Road is classified as a residential collector roadway, under Section 25-6-114(C) of the Land Development Code, and currently has 24 feet of pavement width. Per LDC 25-6-116, pavement widths less than 30 ft. shall not exceed 1,200 vehicle trips per day.

The potential trips generated by this site, in combination with the existing traffic of Sprinkle Cutoff Road, are estimated to total 4,890 daily vehicle trips, I excess of the threshold set forth in the LDC 25 – 6 – 116. Therefore, mitigation is required as a part of this proposed development. Therefore, staff recommends the following conditions apply to this zoning application.

RECOMMENDATIONS

Prior to the 3rd Reading of City Council, the applicant shall commit to the following conditions:

1. Thirty feet (30) of right-of-way shall be dedicated from the centerline of Sprinkle Cutoff Road to provide the ultimate dimension of sixty (60) feet of right-of-way in accordance with the Transportation Criteria Manual.
2. The applicant will post fiscal and/or construct up to one half of the ultimate cross section determined for Sprinkle Cutoff Road, as a part of the site development application process.
3. Development of this property should not vary from the approved uses, nor exceed the approved land use intensity and estimated daily trip generation assumptions within this memorandum, otherwise a revised Neighborhood Traffic Analysis or Traffic Impact Analysis shall be required at the time of site plan application and may result in additional mitigation requirements.
4. City Council may deny an application if the neighborhood traffic analysis demonstrates that the traffic generated by a project combined with existing traffic, exceeds the desirable operating level established on a residential local or collector street in the neighborhood traffic study area.

If you have any questions or require additional information, please contact me (512) 974 – 2208.

Scott A. James, P.E., PTOE
Land Use Review/ Transportation
Development Services Department

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.

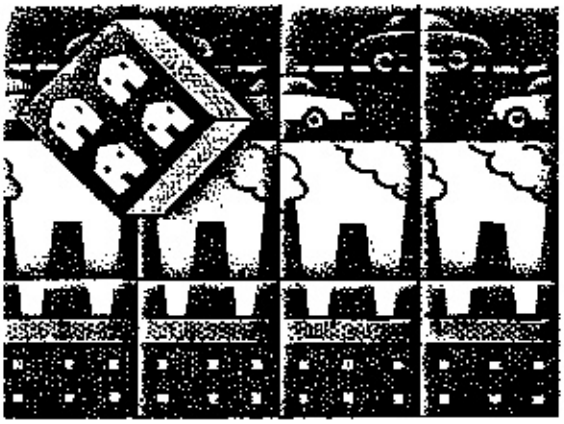

illustration by Paul Hoffman for PlannersWeb

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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." [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

Aspects Of Community Development:

- Beautification
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- Community Organizations
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- Economic Development
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Avoid Spot Zoning To Be Seen as Fair

Spot zoning refers to applying a map classification for purposes of the municipal zoning ordinance to a particular parcel of land without regard to its surrounding designations. That's a bad thing, not a good thing.

Because the courts frown on it so much, neighbors who don't like a particular rezoning proposal are likely to throw around this accusatory term. Whether or not it's a spot zoning is always a judgment call, but it's a conclusion that the governing bodies of the city or county establishing the ordinance have to draw.

Examples will help. If you want to plunk down a commercial designation on a residential lot that is situated mid-block in a subdivision, that sure sounds like a spot zoning in almost all conceivable circumstances.

This practice occurs because people favor or dislike other people, or perhaps because the local planning commission and city council don't have the courage to say no.

Let's make our example

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harder. What if this is a development influenced by new urbanism and the mixed-use concept, and the proposed commercial lot is at the end of the block, instead of in the middle? In many cities corner stores are a traditional neighborhood layout.

What if there are architectural controls or urban design standards that would limit the mass, height, setbacks, and appearance of the building to the same standards that would apply to a house?

Since true new urbanist developments often are based on form-based codes rather than conventional zoning, that is somewhat unlikely. But if you had such an event, you wouldn't have a clear-cut case.

What Can You Do About a Bad Land Use Planning Decision?

If you think a poor planning decision is coming to your neighborhood, mobilize and organize your neighbors. That's the most effective thing you can do. Final land use decisions and zoning decisions are almost always made by elected officials, and they are susceptible to pressure from citizens. Learn as much as you can about the zoning of surrounding properties, any comprehensive or small-area plans that have been adopted for the property in question, and the history of land uses on the parcel proposed for rezoning.

I hope you're seeing this isn't a scientific or empirical concept that we citizens can demonstrate; it's subjective.

Why Do Courts React Negatively to Spot Zoning?

Courts rule against a scattered pattern of land use designations for two reasons:

• Fundamental fairness. One of the foundational truths of land use law is that equal properties should be treated equally. Often in the case of alleged spot zoning, the suspicion is that perhaps the person seeking the change is a friend of some decision-maker or is owed a political favor. Or perhaps just is an influential person around town.

• The strong legal nexus (connection) between land use planning and zoning. The ordinance is legally defensible to the extent it is based on good analysis and study of desirable future land use. When something looks so fishy that no reasonable planning commission would perceive it as a logical and desirable land use pattern, then the court may well say that's spot zoning.

When Rezoning Seems Contrary to Sound Land Use Principles

At the local level, when you hear talk about spot zoning, it may be simply a rhetorical flourish, or it may be a pretty fair summary of how most objective parties would view the situation.

The most important element to keep your local government legally defensible is to keep in mind that decisions should be based on logical and sound analysis rather than personalities, preferences, or property owners.

If everyone could have whatever zoning he or she wished as a property owner, there would be no purpose in having the regulation. It would be like one place where I worked, where supposedly in earlier times the zoning map was kept in pencil and people sneaked into the relevant office, erased the category abbreviation, and changed it to what they wanted. Those were the bad old days.

A town or city of any size probably needs zoning or a form-based code. In either case, fairness is of prime importance.

Also of Interest: