

## Spot Zoning Attachment

A rezoning that is inconsistent with the zoning of surrounding parcels and results primarily in a benefit or favorable treatment to a particular property owner may be invalidated by a reviewing court upon review as illegal spot zoning.

When considering whether a local government's zoning decision constitutes illegal spot zoning, courts often look at the following four factors: 1) the size of the spot 2) the compatibility with the surrounding area 3) the benefit to the owner and 4) the detriment to the immediate neighborhood.<sup>1</sup> The size of an illegal spot zoning is generally a single parcel.<sup>2</sup>

When considering the compatibility with the surrounding area, courts look at the current zoning of the surrounding area and the proposed zoning of the parcel at issue. Where the zoning of the surrounding parcels are of a much different density or type than the rezoning applicant's parcel, a court is likely to find illegal spot zoning.<sup>3</sup> Where the rezoning would allow the parcel to be developed more like the surrounding parcels, a court is likely to uphold the rezoning.<sup>4</sup> For example, where commercial zoned parcels have grown around a residential parcel, rezoning the residential parcel to match is not considered illegal spot zoning.<sup>5</sup> On the other hand, where residentially zoned parcels surround a parcel proposed to become a multifamily zone, Florida's Third District Court of Appeal found that such a change would constitute illegal spot zoning.<sup>6</sup>

Courts often look at the benefit to the owner of the parcel and detriment to the immediate neighborhood to decide whether a local government's rezoning constitutes spot zoning. Spot zoning "creates a small island of property with restrictions on its use different from that of surrounding properties-solely for the benefit of a particular property owner."<sup>7</sup> Where rezoning benefits accrue only to the owner at substantial cost to the neighborhood, zoning is generally found illegal.<sup>8</sup> Even where the rezoning could grant the surrounding neighborhood some benefit if the rezoning would have negative impact as well, the rezoning may be struck down by a reviewing court. In the case of a rezoning for a parking structure with space for businesses planned for a neighborhood in need of parking, the commercial zoning was not allowed because it "could well spread and destroy the character of the neighborhood."<sup>9</sup>

Further, the existence of a non-conforming use does not create an entitlement to a rezoning. On the contrary, zoning are generally intended to "look forward to the eventual elimination of all non-conforming structures and uses as speedily as is consistent with the safeguards for the rights of those persons affected." See e.g., Jpm Inv. Group v. Brevard County, 818 So. 2D 595 (Fla. 5<sup>th</sup> DCA 2002); 12A Fla. Jur. 2d, Counties and Municipal Corporations 203.

1 Bird-Kendall Homeowners Ass'n v. Metro. Dade County Bd. of County Com'rs, 695 So. 2d 908,910 (Fla. 3d DCA 1997) (citing Parking Facilities, Inc. v. City of Miami Beach, 88 So.2d 141 (Fla.1956) and Dade County v. Inversiones Rafamar S.A., 360 So.2d 1130 (Fla. 3d DCA 1978)).

2 See Parking Facilities, Inc. v. City of Miami Beach, 88 So.2d 141 (Fla.1956) and Bird-Kendall Homeowners Ass'n v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs, 695 So. 2d 908 (Fla. Dist. Ct. App. 1997).

3 See, e.g., Bird-Kendall Homeowners Ass'n v. Metro. Dade Cnty. Bd. Of Cnty. Comm'rs, 695 So. 2d 908 (Fla. Dist. Ct. App. 1997); Allapattah Cmty. Ass'n, Inc. of Florida v. City of Miami, 379 So. 2d 387, 388 (Fla. 3d DCA 1980); and Parking Facilities, Inc. v. City of Miami Beach, 88 So. 2d 141, 143 (Fla. 1956).

4 See Town of Juno Beach v. McLeod, 832 So. 2d 864 (Fla. Dist. Ct. App. 2002) and City Comm'n of City of Miami v. Woodlawn Park Cemetery Co., 553 So. 2d 1227 (Fla. Dist. Ct. App. 1989) (upholding the rezoning of residential parcels to match surrounding commercially zoned parcels in order to remedy 'reverse spot zoning').

5 See id.

6 Donch v. City of Miami, 214 So. 2d 503 (Fla. 3d DCA 1968).

7 City Commission of the City of Miami v. Woodlawn Park Cemetery Co., 553 So.2d 1227, 1240 (Fla. 3d DCA 1989).

8 See Bird-Kendall Homeowners Ass'n v. Metro. Dade County Bd. of County Com'rs, 695 So. 2d 908, 910 (Fla. 3d DCA 1997) (citing Parking Facilities, Inc. v. City of Miami Beach, 88 So.2d 141 (Fla.1956) and Dade County v. Inversiones Rafamar S.A., 360 So.2d 1130 (Fla. 3d DCA 1978)).

9 Parking Facilities, Inc. v. City of Miami Beach, 88 So. 2d 141, 143 (Fla. 1956).