



NJ Case of the Month:

Riya Finnegan LLC v. Township Council of the Township of South Brunswick and the South Brunswick Township Planning Board

by Jack Plackter

Riya Finnegan LLC v. Township Council of the Township of South Brunswick and the South Brunswick Township Planning Board involves two inter-related zoning questions:

1. The standard against which courts must test the sufficiency of reasons given by a municipality for rezoning a parcel of a previously-designated zone that is consistent with the existing Master Plan to a zone that is not consistent with the Master Plan.
2. Whether the decision of the municipality to zone a single parcel in a manner inconsistent with the Master Plan constitutes impermissible inverse spot zoning.

The court, in a 7-2, decision concluded that the ordinance adopted by the municipality's governing body for changing the zoning applicable to the particular piece of property was arbitrary and capricious, and under the circumstances, the rezoning of the specific parcel constitutes inverse spot zoning.

About the Case

Riya Finnegan, LLC owns a sizeable parcel of undeveloped land in South Brunswick where Route 27 borders both Franklin Township and North Brunswick. In 2001, the South Brunswick Planning Board adopted its Master Plan. In accordance with the land use element of the Master Plan, the parcel was included in the C-1 or Neighborhood Commercial Zone.

The intent of the C-1 Neighborhood Commercial Zone is to permit the delivery of low-traffic-generating retail and professional services that directly benefit residents of the surrounding neighborhood.

In 2003, the plaintiff filed a site plan application seeking to develop property by constructing one professional and two retail buildings, one of which was to be a drugstore. The application fully complied with all requirements of the C-1 Zone. At the hearing, neighboring residents objected, contending that retail pharmacies were not a permitted use. Both the Planning Board and Zoning Board rejected the neighbors' challenge and concluded that a drugstore was a permitted use in the C-1 Zone.

The neighborhood residents, in a continuing effort to stop the plaintiff from proceeding, appeared before Township Council and asked that the plaintiff's parcel be rezoned. The residents central argument was that if the plaintiff is permitted to develop his land as allowed by the C-1 Zone, there would be additional traffic, noise, odor, dust and pollution. The neighbors wanted the plaintiff's land to be rezoned to Office Professional. The matter was referred to the Planning Board for its input. Following a public hearing, during which representatives of the neighboring property owners

supported the measure, the Planning Board recommended that Township Council rezone the plaintiff's property.

After hearing from the neighboring property owners and from the plaintiff's representatives, the Township Council adopted an Ordinance that would rezone the plaintiff's property from C-1 to the OP Zone. The accompanying resolution explained its reasons and recognized that the decision to rezone the parcel would be inconsistent with the Master Plan, but stated that the rezoning would significantly protect the health, safety and welfare of the residents and motorists in the area. The governing body explained that it decided to rezone the property to "prevent an intensification of traffic congestion at the intersection" and that "increased traffic from the site if it is developed as a commercial facility that is permitted by the C-1 zone will significantly impact the flow of cars and trucks through the Brunswick Acres residential development and past the Brunswick Acres elementary school and park." After the rezoning, the plaintiff filed a complaint in lieu of prerogative writs, asserting that the rezoning is inconsistent with the Master Plan, was arbitrary and capricious, and constituted impermissible inverse spot zoning.

At the trial, the Superior Court Law Division ruled that "although the Township had complied with the technical requirements of the applicable provision of the Municipal Land Use Law (MLUL), N.J.S.A., 40:55D-62(a), because the governing body had based its decision solely on the assertions of the neighboring property owners, and because those complaints were not supported in the record, its decision was arbitrary and capricious." In the alternative, the trial court concluded that because the Township had rezoned only the plaintiff's parcel, and because there was no evidence in the record that the zoning change would further the comprehensive zoning plan in the Township, the change constitutes impermissible inverse spot zoning.

The defendants, the Planning Board and the Township, appealed to the Appellate Division, which reversed the judgment of the Superior Court. The Appellate Division applied a different standard of review, reasoning that because the Township was acting in a legislative rather than quasi-judicial capacity, its reliance on the objections of the neighboring residents alone was permitted. In addition, the appellate panel concluded that the ordinance adequately complied with N.J.S.A. 40:55D-62(a) by setting forth the governing body's reasons and decision to rezone the parcel in a manner inconsistent with the Master Plan. The Supreme Court granted the plaintiff's petition for certification.

The Legal Discussion

While the Supreme Court recognized that the power to review an adoption or amendment to a zoning ordinance is circumscribed, nevertheless, the power to zone cannot be wielded arbitrarily. While the Master Plan itself has no independent force, the requirement that the zoning ordinance be "substantially consistent" with it connotes a recognition by our Legislature of the importance of comprehensive planning. The MLUL permits the governing body to adopt a zoning ordinance or an amendment to the zoning ordinance that is inconsistent with the Master Plan, but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes. The Court held that while there is no doubt that the municipality complied with the technical requirements, the reliance on the testimony of the residents was a flawed reason for rezoning the property.

The Court held that it was entirely appropriate for a governing body to hear testimony from its citizens and to respond. It may be that the testimony offered by those citizens, without expert analysis, will be sufficient. But that testimony must be grounded in facts and must be analyzed in light of a comprehensive plan, such as is expressed in the Master Plan. The Court noted that the reasons expressed by the governing body for its decision to rezone the parcel fall short of the requirements. The Township's reference to traffic concerns was illustrative. Although the Court did not share the Superior Court's view that the Township's failure to consult its professional planner or to take testimony from experts about traffic concerns made the ordinance inadequate on its face, the failure to point to any support for the concerns of the neighborhood residents makes it inadequate.

The Court felt that if concerns expressed by the neighboring residents about traffic congestion suffice it to support a rezoning ordinance, it would be impossible for any undeveloped parcel to be utilized. Second, the concerns expressed about traffic that might be generated from the proposed development were generic complaints. Although the neighbors argued that an office building would generate traffic at hours that they found preferable to the plaintiff's proposed 24-hour drugstore, it is not necessarily true that rezoning the property to the OP Zone would address that concern. In fact, the OP Zone is not limited to office building, but would also include banks, health clubs, fitness centers and dance studios, nursing homes, extended stay facilities, assisted living and laboratory or research facilities. There is no evidence in the record that those uses would not also generate traffic congestion in the volume or during the hours that were of concern to the residents.

Moreover, the resolution does not include as part of its rationale why the parcel zoned as C-1 and located along a corridor dotted with other areas so zoned, suddenly became appropriate to be rezoned to OP. OP Zones were designed for an entirely different part of the municipality, the Route 1 corridor, and prior to this decision to rezone, existed only there.

The Court then held that the fundamental question in all zoning cases is whether the requirements of the ordinance are reasonable under the circumstances. The Court felt tested against this standard. The decision of the municipality to rezone the plaintiff's property was arbitrary, capricious and unreasonable.

Moreover, the Court held that the decision to rezone the plaintiff's property constituted inverse spot zoning. Generally, spot zoning is "the use of a zoning power to benefit particular private interests rather than the collective interests of the community."

The central question in this spot zoning case is whether the rezoning "represents sound judgment based on the policy of the statute to advance the common good and welfare or whether it is arbitrary and unreasonable and furthers purely private interests." The Court held that the emphasis in an inverse spot zoning case is on the arbitrary nature of the decision rather than simply upon whether a particular parcel has received beneficial or detrimental treatment. In holding that the municipality and Planning Board engaged in inverse spot zoning, the Court relied on the following:

- 1) its proposed site plan was completely in accord with previously-designated zone
- 2) neighboring property owners would be impetus to the change
- 3) the new zone was originally designed for an entirely different part of the town
- 4) the zone was for different planning purposes
- 5) the new zone did not further a comprehensive plan
- 6) the Planning Board and the municipality acted without hearing from expert planners or consultants

The Court noted that it was not one of those facts but the combination of those facts and circumstances that makes the decision arbitrary and capricious and therefore illegal inverse spot zoning.

The Court held that it did not intend its decision to imply that it can never be appropriate to change the zoning designation of what is, in effect, the last undeveloped parcel in a town or in a discrete geographic area of a municipality. To be sure, the zoning designation of undeveloped land can be changed either as part of a reexamination of a Master Plan or through the statutory authorized enactment of a zoning ordinance inconsistent with the Master Plan.

In a dissent, Justice Albin, joined by Justice Long, felt that the majority of the Court substituted its own equitable judgment for a lawfully-enacted zoning ordinance addressing public safety and quality-of-life issues of concern to South Brunswick's residents. The dissent felt that the municipality followed the proper statutorily mandated procedure in adopting the zoning ordinance amendment. The dissent felt that that contrary to the assertions of the majority of the Court, the municipality's findings in its

resolution were grounded on precise, not generic, information provided by local residents and on the commonsense inferences drawn by council members who were familiar with the area to be developed. The dissenting judges felt that council did not need to hear from a civil engineer or a land use planning expert to understand that the plaintiff's intended commercial development would exacerbate safety and health concerns of the residents living within the immediate area of the Route 27 corridor. The dissenting judges felt that the council's findings presented in its resolution are entitled to deference by the Court and a presumption of validity. Additionally, the dissent felt that the majority substituted its own judgment for that of the Township Council. It concluded that the Township Council did not act in an arbitrary or capricious matter.

First, the MLUL allows a land use ordinance to be inconsistent with the Master Plan provided municipality properly cites its reasons. Moreover, unlike the established case precedent, in this case there was no disagreement between the township's professional who recommended against a zoning change. In the instant case, South Brunswick's Director of Planning and Community Development gave an opinion that a change in zoning would clearly need to enhance the protection of health and safety of the residents. Finally, the Court discussed equitable doctrine of inverse spot rezoning and indicated that a court cannot use its equitable powers to disregard clear legislative enactments because they are not in conformity with the court's view of what is fair. The dissent argued that the Court has no power to remake the law in its own image provided the law is precisely followed.

This case stands for the proposition that Courts will look more carefully at rezonings that are accomplished outside of the Master Plan review process and happen to be inconsistent with the Master Plan. Experts must be hired to do comprehensive studies on rezoning and objective criteria must be used together with the presentation of facts in support of those objective criteria to show that the ends sought to be achieved by a Legislative act like rezoning will actually be achieved through the rezoning process.

For more information about this topic, contact Jack Plackter at 609.572.2200 or jplackter@foxrothschild.com.



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