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MEMO

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SPOT ZONING

Reverse spot zoning occurs when a zoning ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating, in effect, a veritable zoning island or a zoning peninsula, in a surrounding sea of contrary zoning classification. *City Com. of Miami v. Woodlawn Park Cemetery, Co*., 553 So.2d 1227 (Fla. 3d DCA 1989).

In characterizing the elements of spot zoning, a spot zoning challenge typically involves the examination of the following: (*Bird-Kendall Homeowners Association v. Metropolitan Dade County Board of Commissioners*, 695 So.2d 908 (Fla. 3d DCA 1997))

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.

PROCEDURE TO CHALLENGE ZONING

A. APPEALS TO THE CITY

Usually a municipality provides for a process for administrative appeals. Frequently, a planning and zoning board reviews and decides appeals from any person adversely affected by a decision of the administration. The planning and zoning board may modify, reverse or affirm the administrative official's decision interpreting or applying the provisions of the Land Development Code.

Administrative appeals are filed using a written application provided by the department of community development.

A party aggrieved by application of statute or ordinance must invoke and exhaust

administrative remedies provided thereby before he may resort to courts for relief. *Wood v. Twin Lake Mobile Home Homes Village, Inc.*, 123 So.2d 738 (Fla. 2d DCA 1960).

B. JUDICIAL APPEALS

Zoning decisions of county commissions and other local governmental bodies are generally classified as either legislative or quasi-judicial. Certiorari is the proper method to review the quasi-judicial actions of a Board of County Commissioners, whereas injunctive and declaratory suits are the proper way to attack a Board's legislative actions.

Courts have frequently discussed the distinction between the standards of review which furnish the guidelines to determine the validity of different types of zoning actions. It has long been established that in reviewing a legislative action, e.g., enactment of a zoning ordinance, courts must uphold a properly enacted and constitutional ordinance as long as it is "fairly debatable." *Harrell's Candy Kitchen v. Sarasota-Manatee Airport Authority,* 111 So.2d 439 (Fla.1959). In reviewing quasi-judicial actions, however, courts are called upon to determine if the action of the local governmental body is supported by substantial, competent evidence. *De Groot v. Sheffield,* 95 So.2d 912 (Fla.1957). This difference in the scope of review is appropriate. The judicial deference inherent in the "fairly debatable" standard is suitably employed to review legislative actions whereby a governmental body makes local policy decisions.

Whether a board's zoning decision is considered legislative or quasi-judicial appears to turn on whether the local governmental body is enacting an ordinance, in which case it is acting legislatively, or enforcing it, in which case it may be acting quasi-judicially. Thus, creating zoning districts and rezoning land are legislative actions, and as the court said in *Naples Airport Auth. v. Collier Dev.,* 513 So.2d 247, 249 (Fla. 2d DCA 1987), trial courts are not permitted to sit as "super zoning boards" and overturn a board's legislative efforts.

Zoning decisions, including those approving or disapproving a request for a variance or a special exception, resulting from a proceeding in which zoning provisions are applied to a specific property affecting a limited number of people, are quasi-judicial in nature. Thus, the proper procedure would be for the person/entity to challenge the decision by certiorari within 30 days of the decision.

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