

Rezoning

Let's start with rezoning, but first, a quick caveat: although there are two types of rezoning actions, (1) an amendment to the zoning ordinance's text that impacts all properties, or (2) an amendment to the ordinance's map to change the use district of an individual parcel, because the first action is less common, this article will consider only the second. •

Purpose of Rezoning

The purpose of zoning is to regulate land uses to serve the health, safety and general welfare of the public. To achieve this purpose, zoning laws address the impacts of land uses, including such things as:

- Protecting all properties from potentially negative consequences of neighboring, incompatible uses
- Protecting the value of properties by permitting them the most appropriate land uses, and minimizing potentially negative impact of nearby uses
- Controlling the location and negative impacts of nuisance-like uses, and
- Providing adequate public services (e.g., transportation, water and sewers)

Accordingly, a rezoning might be allowed where one of these objectives (or similar ones) is no longer being met by the existing use designation, and the proposed use would further one or more of these goals.

Examples of Rezoning

Rezoning may be appropriate in a number of different circumstances. For example, where a city wishes to replace an undesirable use with a more attractive use, it may initiate a rezoning to a district that doesn't allow the undesirable use. This can occur, for instance, when a city replaces an intensive multi-family residential district to a less-intensive single-family district to reduce potential strains on public infrastructure, or other general welfare objectives.

Similarly, a property owner can seek a rezoning to change the use district to permit a new use that has become more appropriate due to the city's development. For example, where undeveloped ground on the edge of the city limits had been limited to agricultural uses, and the city's growth resulted in residential uses approaching the agricultural district, a retail commercial use may be appropriate to support the shopping needs of these neighborhoods. So long as the comprehensive plan included objectives for the city's development that address the public need being filled in a rezoning application (here, supporting residents' shopping needs), the rezoning may comply with the plan even if it didn't specifically project the particular growth.

Requirements for Approval of a Rezoning

First and foremost, the rezoning application must comply with the procedures described in the municipality's zoning ordinance, including things like (1) meeting with neighborhoods

potentially impacted by the change, (2) meeting with city staff prior to application to discuss potential issues and ensure the application is in proper form, and (3) that any application fees are paid.

Secondly, the rezoning generally must comply with the comprehensive plan. As the plan is a guiding, and not binding document, the city may exercise some flexibility in finding compliance. The retail scenario above is a good example: the plan didn't project that retail would be appropriate in the subject parcel, but it did note that retail to support residents was one of the plan's objectives.

The city will then determine if the proposed use is either a permitted use or a conditional use within the proposed district.

Common Rezoning Issues

Next, let's take a look at some common zoning issues. In this section we'll talk about regulatory takings, spot-zoning, and "Not In My Backyard", or NIMBY opposition.

Regulatory Taking

As described in our practical guide to zoning, if a city-initiated rezoning, and its attendant regulations, effectively deprive a landowner of all economically reasonable use or value of their property, it can be considered a regulatory taking. A taking occurs when the government exercises its power of eminent domain to acquire ownership of private property for a public use or benefit. While a government has this right, if it does so, it must compensate the landowner for the loss of its land.

In the case of a regulatory taking, although the government hasn't taken title to the property, because its regulations rendered the land essentially worthless, the regulation is viewed as a taking, and the landowner must be compensated.

Spot-Zoning

As described in this article on zoning terms, spot-zoning occurs when a single parcel is zoned differently than surrounding uses for the sole benefit of the landowner. Such zoning is unlawful. Although property may lawfully be zoned differently than surrounding uses, pursuant to guiding planning documents (e.g., the comprehensive plan), policies and zoning ordinances, such varying uses are typically permitted only because they serve a public benefit or a useful purpose to the surrounding properties.

A simple test to determine if a rezoning is spot-zoning is to consider whether the rezoning complies with the comprehensive plan. If it does not, then it is spot-zoning. A fix for this scenario is to amend the plan and ordinance to allow for the proposed use before the rezoning occurs.

NIMBY Opposition

An acronym for "Not In My Backyard," NIMBY is an organized opposition to a rezoning based on the assertion that the new use will negatively impact the objecting parties' properties. Such

protest can occur in all three of the zoning actions considered here, but for sake of brevity, we'll consider it as applied to rezoning requests.

NIMBY participants are most often residential property owners, and object to uses they believe will negatively impact their homes, including uses like:

- Landfills, quarries, and industrial or manufacturing uses
- Roadways
- Halfway houses and homeless shelters
- Low-income housing
- Adult uses, and
- Large-scale commercial developments (e.g., office complex, shopping mall, sports

complex)

In considering such protest, cities will try and balance what the public as a whole needs (e.g., residents generally need shopping centers and roadways) with the desires of neighboring residential property owners.

One way to balance these potentially incompatible needs is the imposition of conditions on the new use. For example, if residents oppose construction of a new sports complex on the grounds that it will create consistent and disruptive noise, the city could require the development to employ larger setbacks or construct noise-buffering structures.

For more on this subject, click to the article and read about Use Permits.

<https://www.propertymetrics.com/blog/2017/01/20/rezoning-conditional-use-permit-or-variance/>