



LEGAL REVIEW
PLANNING AND ZONING COMMISSION
CONSIDERATION OF ZONING AND
LAND USE CASES



LEGAL JUSTIFICATION FOR REZONING PROPERTY

- *City of Pharr v. Tippitt*, 616 S.W.2d 713 (Tex. 1981). Still the law in Texas.
- Zoning is an exercise of legislative power – discretionary act of the governing body



Rezoning Cont'd

- Zoning ordinances are presumed to be valid.
- Burden on the party attacking the zoning decision is to prove that it is arbitrary or unreasonable – bearing no substantial relationship to the health, safety, morals, or general welfare of the community.



Rezoning Cont'd

- Legal criteria/standards :
- A comprehensive zoning ordinance is a law that binds the municipal governing body.

Rezoning Cont'd



“The legislative body does not, on each rezoning hearing, redetermine as an original matter, the city's policy of comprehensive zoning. The law demands that the approved zoning plan should be respected and not altered for the special benefit of the landowner when the change will cause substantial detriment to the surrounding lands or serve no substantial public purpose.”



Rezoning Cont'd

- The nature and degree of adverse impact on neighboring lands is important.

“Lots that are rezoned in a way that is substantially inconsistent with the zoning of the surrounding area, whether more or less restrictive, are likely to be invalid.”



Rezoning Cont'd

- The suitability or unsuitability of the tract for use as presently zoned is a factor.
- The size, shape and location of a lot may render a tract unusable or even confiscatory as zoned.

“This factor, like the others, must often be weighed in relation to the other standards, and instances can exist in which the use for which land is zoned may be rezoned upon proof of a real public need or substantially changed conditions in the neighborhood.”



Rezoning Cont'd

- The amending ordinance must bear a substantial relationship to the public health, safety, morals or general welfare or protect and preserve historical cultural places or areas.

Rezoning Cont'd

- The rezoning ordinance is justified if there has been a substantial change of conditions in the surrounding area or there is a substantial unmet public need for the land use.
[Example: A shortage of available land for multi-family housing justified the alleged “spot zoning” ordinance in the City of Pharr v. Tippitt case].



Rezoning Cont'd

- Spot zoning is one form of arbitrary and capricious rezoning.
- “The term, "spot zoning," is used in Texas and most states to connote an unacceptable amendatory ordinance that singles out a small tract for treatment that differs from that accorded similar surrounding land without proof of changes in conditions.”



Rezoning Cont'd

- It is piecemeal zoning, the antithesis of planned zoning.
- Spot zoning has uniformly been denied when there is a substantial adverse impact upon the surrounding land.
- The size of a rezoned tract in relation to the affected neighboring lands has been said by some authorities to be the most significant consideration in rezoning.

Rezoning Cont'd



- *Summary:* Each legal standard requires a factual determination – supported by evidence in the record -- in order to justify rezoning.



**ZONING MYTHS - “HIGHEST AND BEST USE”
“ENTITLEMENT” - REGULATORY TAKINGS
ANALYSIS**



Zoning Issues Cont'd

- “Highest and best use” is a real estate appraisal term that is frequently misused in the context of municipal zoning decisions.
- There is no protected property right to obtain rezoning of property to any particular use or a use that increases potential profits.



Zoning Issues Cont'd

- The act of rezoning is a discretionary legislative decision.
- Zoning is often referred to as the “entitlement” phase of land development; but there is no “entitlement” to obtain a particular outcome from the zoning process.



Zoning Issues Cont'd

- *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922 (Tex. 1998)
- Texas Supreme Court analysis: When does the denial of a zoning request constitute a compensable taking of private property?



Zoning Issues Cont'd

Mayhew Basic Facts:

- Town of 2,000. Mayhew family acquired 850 acres for ranching purposes from 1941 to 1965. Acquired an additional 346 acres for development purposes in 1985. Zoning ordinance adopted in 1965 allowed 3.6 dwelling units/acre.



Zoning Issues Cont'd

Mayhew Facts Cont'd

- Amended in 1973 to require minimum of 1 acre lots per dwelling unit. Greater densities subject to city council approval. Mayhews struck a deal with Trammel Crow to sell their land if and only if the Town approves 3,600 apartment units. Mayhews spent \$500,000 on consultants and reports. Then submit an application to allow 3,600 to 5,000 units.



Zoning Issues Cont'd

Mayhew Facts Cont'd

- While case is pending at P & Z, Council passes a moratorium. P & Z recommends denial. Mayor, city manager, and city attorney negotiate a “compromise” of 3,600 units. City council denies 4-1. Mayhews sue the town and the four council members who voted to deny -- alleging a taking of their property without just compensation.



Zoning Issues Cont'd

- The application of a general zoning law to a particular property constitutes a regulatory taking if the ordinance “does not substantially advance legitimate state interests” or it denies an owner all “economically viable use” of his land.



Zoning Issues Cont'd

- A compensable regulatory taking can also occur when governmental agencies impose restrictions that either: (1) deny landowners of all economically viable use of their property; or (2) unreasonably interfere with landowners' rights to use and enjoy their property.



Zoning Issues Cont'd

- A restriction denies the landowner all economically viable use of the property or totally destroys the value of the property if the restriction renders the property valueless. Determining whether all economically viable use of a property has been denied entails a relatively simple analysis of whether value remains in the property after the governmental action.



Zoning Issues Cont'd

- In contrast, determining whether the government has unreasonably interfered with a landowner's right to use and enjoy property requires a consideration of two factors: (1) the economic impact of the regulation; and (2) the extent to which the regulation interferes with distinct investment-backed expectations. The loss of anticipated gains or potential future profits is not usually considered in analyzing this factor.



Zoning Issues Cont'd

The Mayhews lost because:

- The town had a substantial interest in controlling the rate and character of growth;
- The Mayhews' property was still worth \$2.4 million without the zoning approval they were seeking;



Zoning Issues Cont'd

The Mayhews lost because:

- Their initial investment-backed expectation was to use 850 acres for ranching – which they did for 40 years; and
- When they purchased the additional 349 acres for development, they knew that the City's zoning ordinance only allowed one dwelling per acre.