§ 2.12 Spot Zoning

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The antithesis of zoning by district is spot zoning. [158] This is the term used by the courts to describe a zoning amendment that is invalid because it is not in accordance with a comprehensive plan. [159] It is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners. [160]

Zoning ordinances are presumed to be valid. The person challenging a zoning change has the burden of proving that a zoning change is unreasonable or unlawful. [161] Changes in zoning boundaries can be justified only when they are for the purpose of promoting health, safety, morals, or the general welfare of the community. Furthermore, they must be made in accordance with a comprehensive plan. Adjoining property owners are entitled to rely on the rule that a classification, once made, will not be changed unless the change is required for the public good. [162]

A court will find that a change has resulted in "spot zoning" when the area is singled out for a treatment different from that of similar surrounding land which cannot be justified on the basis of health, safety, morals, or the general welfare of the community, and is not in accordance with a comprehensive plan. On the other hand, the mere fact that an area is small, is zoned at the request of a single owner, and is of greater benefit to that owner than to others does not make out a case of spot zoning if there is a public need or a compelling reason for it. [163]

Spot zoning was not found in *Schadlick v. Concord*. [164] In this case, sixty acres were rezoned from agricultural and single residential to multifamily residential. The rezoned area was adjacent to land currently used for multi-family residences. [165] Under the previous zoning, suitable space did not exist for needed apartments. [166] Therefore, the court held that the zoning change was not unreasonable. [167] On the other hand, the court did find spot zoning in*Bosse v. Portsmouth*. [168] Here the legislative body rezoned an area surrounded by single-family residential to light industrial although hundreds of acres of industrial property were vacant. [169] In *Munger v. Exeter*, [170] the court found no public need or compelling reason for the rezoning of a half-acre lot from residential to commercial. The court remanded the case to the Superior Court with instructions to vacate the decision of the town meeting.

In *Portsmouth Advocates, Inc. v. City of Portsmouth*, [171] the New Hampshire Supreme Court found that spot zoning had not occurred when the city council amended the historic district to remove a two-block area containing seven buildings. [172] Even though the rezoning was instigated solely at the request of one landowner who wanted to avoid the restrictions in the historic district, the court found that the seven buildings which were removed from the district were not of historical value and that the rezoning was not inconsistent with the city's comprehensive plan. [173]

In *Miller v. Town of Tilton* [174] the expansion of an agricultural buffer zone to include plaintiffs' land which had previously been zoned industrial was not spot zoning. Plaintiffs' land was on the border between the industrial and agricultural zones. Although the property was zoned for industrial use when plaintiffs purchased it and when an abutting property owner submitted a petitioned zoning article to enlarge the agricultural zone to its original border, including the plaintiffs' land, the zoning of that particular parcel had changed several times over the years. [175] The Court seemed to be swayed by the fact that the zoning amendment did not create a new, incongruous district, but merely extended a pre-existing district. It also seemed influenced by the fact that the amendment had been supported by a majority of the public and that it could be found to protect the health and welfare of area residents. [176]

158 1 K. Young, Anderson's American Law of Zoning, § 5.12 (1996).
159 Id.
160 Id.
161 RSA 677:6; *Rochester v. Barcomb*, 103 NH 247, 169 A.2d 281 (1961).

162 *Bosse v. Portsmouth*, 107 NH 523, 226 A.2d 99 (1967) (rezoning of a 42-acre parcel to light industrial when it was surrounded by hundreds of acres of residentially zoned property was invalid; testimony showed no compelling need for more limited industrial land, since the city had over 800 acres zoned for this purpose and almost 700 of those acres were vacant).
163 *Shadlick v. Concord*, 108 NH 319, 234 A.2d 523 (1967).
164 Id.
165 Id, at 323, 234 A.2d at 526.
166 Id.
167 Id.
168 107 NH 523, 226 A.2d 99 (1967).
169 The Bosse case is a good example of a legislative body attempting to use the zoning process to accomplish a particular good for a person or group of persons without paying proper attention to the fact that land use regulation is designed to affect the land and not necessarily just the persons presently desiring to use it. The small island of land had been rezoned at the request of a popular and useful citizen so that she could construct a new, handicapped workshop and expand to a different area of the community a meritorious use that she had started in another location.
170 128 NH 196, 512 A.2d 418 (1986).
171 133 NH 876, 587 A.2d 600 (1991).
172 *Portsmouth Advocates, Inc. v. City of Portsmouth*, 133 NH 876, 880, 587 A.2d 600, 603 (1991).
173 Id.
174 139 NH 429, 655 A.2d 409 (1995)
175 Id.
176 Id. At 432, 655 A.2d at 410