

Spot Zoning For Senior Housing Project Upheld

"Spot-zoning" refers to the discriminatory zoning of a small parcel that is surrounded by land within a different zone. Some had thought the doctrine only applies where a small parcel is zoned more restrictively than the property surrounding it. But in the recently decided case of [Foothill Communities Coalition v. County of Orange](#), the court of appeal concluded that spot zoning can be found where an isolated parcel is zoned either more *or less* restrictively than surrounding property. The court found, however, that the county's rezoning decision was supported by evidence in the record of its proceedings, and was therefore not unlawful spot zoning.

The county rezoned a parcel, owned by the Roman Catholic Diocese, for a senior housing project. The petitioner, an association of grassroots community groups and homeowners, challenged the project's approval and the rezone change, arguing it was impermissible spot zoning. The county responded that because the smaller parcel was zoned less restrictively than the surrounding property, the rezoning did not constitute spot zoning. But the court disagreed, stating that "the creation of an island of property with less restrictive zoning in the middle of properties with more restrictive zoning is spot zoning."

Nonetheless, the court rejected the argument that the rezoning was *impermissible* spot zoning. Not all spot zoning is impermissible, and it can be justified, the court said, where a "substantial public need exists" or if it is in the public interest. And here, the court found that the spot zoning was in the public interest based on the state legislature's encouragement of senior housing development and the county's own directives to develop senior housing in its general plan and ordinances. As a consequence, the court concluded that the county's spot zoning was permissible.

The petitioner further argued that the rezoning was inconsistent with the area's specific plan, but the court examined the evidence supporting the county's consistency finding and concluded that the finding was supported by substantial evidence.

Finally, the petitioner argued that the project's objective to provide "faith-based independent and assisted living facilities for seniors" violated the First Amendment's Establishment Clause. The court rejected this argument, finding that the project's approval and the zoning change had a secular purpose to provide needed senior housing, and that the zoning change would not have the primary effect of promoting religion nor would it foster any entanglement between government and religion.

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