

Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
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| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
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| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
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| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

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| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
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| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

24. 61 N.C. App. 100, 300 S.E.2d 273 (1983). **25.** *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

26. 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

27. *Id.* at 683, 394 S.E.2d at 207.

28. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

29. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

30. *Id.* at 175.

31. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

32. 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

33. The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

34. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

35. *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ___ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf.* *Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see* *Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

24. 61 N.C. App. 100, 300 S.E.2d 273 (1983). **25.** *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

26. 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

27. *Id.* at 683, 394 S.E.2d at 207.

28. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

29. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

30. *Id.* at 175.

31. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

32. 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

33. The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

34. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

35. *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ___ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

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proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

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A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

24. 61 N.C. App. 100, 300 S.E.2d 273 (1983). **25.** *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

26. 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

27. *Id.* at 683, 394 S.E.2d at 207.

28. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

29. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

30. *Id.* at 175.

31. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

32. 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

33. The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

34. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

35. *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ____ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

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The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

[24.](#) 61 N.C. App. 100, 300 S.E.2d 273 (1983). [25.](#) *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

[26.](#) 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

[27.](#) *Id.* at 683, 394 S.E.2d at 207.

[28.](#) 108 N.C. App. 231, 423 S.E.2d 537 (1992).

[29.](#) 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

[30.](#) *Id.* at 175.

[31.](#) However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

[32.](#) 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

[33.](#) The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

[34.](#) 127 N.C. App. 63, 488 S.E.2d 277 (1997).

[35.](#) *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

[36.](#) 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

[37.](#) *Id.* at 633, 370 S.E.2d at 592.

[38.](#) 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

[39.](#) 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ____ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

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An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

24. 61 N.C. App. 100, 300 S.E.2d 273 (1983). **25.** *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

26. 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

27. *Id.* at 683, 394 S.E.2d at 207.

28. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

29. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

30. *Id.* at 175.

31. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

32. 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

33. The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

34. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

35. *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ____ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

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accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

24. 61 N.C. App. 100, 300 S.E.2d 273 (1983). **25.** *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

26. 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

27. *Id.* at 683, 394 S.E.2d at 207.

28. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

29. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

30. *Id.* at 175.

31. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

32. 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

33. The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

34. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

35. *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ____ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

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[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

[24.](#) 61 N.C. App. 100, 300 S.E.2d 273 (1983). [25.](#) *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

[26.](#) 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

[27.](#) *Id.* at 683, 394 S.E.2d at 207.

[28.](#) 108 N.C. App. 231, 423 S.E.2d 537 (1992).

[29.](#) 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

[30.](#) *Id.* at 175.

[31.](#) However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

[32.](#) 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

[33.](#) The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

[34.](#) 127 N.C. App. 63, 488 S.E.2d 277 (1997).

[35.](#) *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

[36.](#) 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

[37.](#) *Id.* at 633, 370 S.E.2d at 592.

[38.](#) 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

[39.](#) 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ____ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

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The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

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This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

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^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

[24.](#) 61 N.C. App. 100, 300 S.E.2d 273 (1983). [25.](#) *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

[26.](#) 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

[27.](#) *Id.* at 683, 394 S.E.2d at 207.

[28.](#) 108 N.C. App. 231, 423 S.E.2d 537 (1992).

[29.](#) 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

[30.](#) *Id.* at 175.

[31.](#) However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

[32.](#) 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

[33.](#) The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

[34.](#) 127 N.C. App. 63, 488 S.E.2d 277 (1997).

[35.](#) *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

[36.](#) 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

[37.](#) *Id.* at 633, 370 S.E.2d at 592.

[38.](#) 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

[39.](#) 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ____ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

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^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

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^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

24. 61 N.C. App. 100, 300 S.E.2d 273 (1983). **25.** *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

26. 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

27. *Id.* at 683, 394 S.E.2d at 207.

28. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

29. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

30. *Id.* at 175.

31. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

32. 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

33. The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

34. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

35. *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ____ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

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22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

24. 61 N.C. App. 100, 300 S.E.2d 273 (1983). **25.** *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

26. 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

27. *Id.* at 683, 394 S.E.2d at 207.

28. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

29. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

30. *Id.* at 175.

31. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

32. 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

33. The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

34. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

35. *See also Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ___ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf.* *Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see* *Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

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35. *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ____ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

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43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in Purser in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

[24.](#) 61 N.C. App. 100, 300 S.E.2d 273 (1983). [25.](#) *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

[26.](#) 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

[27.](#) *Id.* at 683, 394 S.E.2d at 207.

[28.](#) 108 N.C. App. 231, 423 S.E.2d 537 (1992).

[29.](#) 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

[30.](#) *Id.* at 175.

[31.](#) However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

[32.](#) 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

[33.](#) The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

[34.](#) 127 N.C. App. 63, 488 S.E.2d 277 (1997).

[35.](#) *See also* *Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

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[37.](#) *Id.* at 633, 370 S.E.2d at 592.

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Spot Zoning

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May 1998**

Spot zoning occurs when a relatively small tract of land is zoned differently from the surrounding area. In North Carolina, spot zoning is not illegal in and of itself, as it is in many states.^[1] However, it must be clearly supported by a reasonable basis to be upheld.

The precise legal basis for invalidating certain spot zonings has not been explicitly set forth by the North Carolina courts, but invalidation could be based on the state constitutional prohibitions against the granting of exclusive privileges,^[2] the creation of monopolies,^[3] or the violation of due process or equal protection of the law.^[4] The admonition in the zoning enabling acts that zoning be in accordance with a comprehensive plan is another ground for invalidation.^[5] Although flexibility is granted to have relatively small zoning districts, the court is sensitive to ensuring that there is a legitimate public interest in having a small district and will invalidate rezonings in which one owner benefits or is relieved from zoning burdens at the expense of his or her neighbors and the community at large.

The table below summarizes the eighteen reported North Carolina appellate decisions on spot zoning.

Overview of Spot Zoning Cases

| Case | Court | Date | Parcel Size (acres) | Zoning Change |
|--------------------|----------|------|---------------------|----------------------------------|
| Invalidated | | | | |
| Allred | Sup.Ct. | 1971 | 9.26 | To higher density residential |
| Blades | Sup.Ct. | 1972 | 5 | To higher density residential |
| Stutts | Ct. App. | 1976 | 4 | To mobile home park |
| Lathan | Ct. App. | 1980 | 11.4 | Residential to light industry |
| Godfrey | Ct. App. | 1983 | 17.45 | Residential to heavy industry |
| Alderman | Ct. App. | 1988 | 14.2 | Agricultural to mobile home park |
| Mahaffey | Ct. App. | 1990 | 0.57 | Residential to commercial |

| | | | | |
|---------------|----------|------|------------|---|
| Covington | Ct. App. | 1992 | 1 lot | Office to conditional use business |
| Budd | Ct. App. | 1994 | 17.5 | Residential-agricultural to special use industrial |
| Upheld | | | | |
| Walker | Sup.Ct. | 1960 | 3.5 | Residential to neighborhood business |
| Zopfi | Sup.Ct. | 1968 | 27, 12, 20 | Commercial/residential to commercial/multi-family residential |
| Heath | Sup.Ct. | 1971 | 15 | Residential to mobile home park |
| Allgood | Sup.Ct. | 1972 | 25 | Residential to commercial |
| Graham | Ct. App. | 1982 | 30.3 | Residential to office/conservation |
| Nelson | Ct. App. | 1986 | 1 lot | Residential to business |
| Chrismon | Sup.Ct. | 1988 | 5, 3 | Agricultural to conditional use industrial |
| Dale | Ct. App. | 1991 | 4.99 | Residential to highway commercial |
| Purser | Ct. App. | 1997 | 14.9 | Residential to conditional use commercial |

Definition

Rezoning that will be subjected to more intensive review as spot zoning were simply and concisely defined in North Carolina's first case on the subject, *Walker v. Town of Elkin*, as zoning "changes limited to small areas."^[6] In 1968 in *Zopfi v. City of Wilmington*,^[7] a case that upheld rezoning of a 60-acre parcel into three zoning districts, the court ruled that illegal spot zoning arose "where a small area, usually a single lot or a few lots, surrounded by other property of similar nature, [was] placed arbitrarily in a different use zone from that to which the surrounding property [was] made subject."^[8] Four years later in *Blades v. City of Raleigh*,^[9] a case that invalidated a 5-acre rezoning, spot zoning was more completely defined thus:

A zoning ordinance, or amendment, which singles out and reclassifies a relatively small tract owned by a single person and surrounded by a much larger area uniformly zoned, so as to impose upon the smaller tract greater restrictions than those imposed upon the larger area, or so as to relieve the small tract from restrictions to which the rest of the area is subjected, is called "spot zoning."^[10]

There are several notable aspects to this definition. First, spot zoning can be an issue with initial zoning as well as with subsequent rezonings. Second, no specific minimum or maximum size of area constitutes spot zoning. The size of the tract must be considered relative to the surrounding area. A 20-acre rezoning in a rural setting where that tract and thousands of adjacent acres have previously been zoned the same way may be spot zoning, whereas a 1-acre rezoning in a dense urban setting with numerous zoning districts may not be spot zoning. In the North Carolina cases that have resulted in invalidation of rezonings as illegal spot zoning, the size of tracts involved has ranged from 0.57 to 17.45 acres. Third, there is an emphasis on a very limited number of property owners being involved, "usually triggered by efforts to secure special benefits for particular property owners, without regard for the rights of adjacent landowners."^[11] A large number of affected parties is more likely to bring the rezoning to broader public scrutiny. Fourth, spot zoning can be involved when the proposed new zoning requirements for the small area are either more or less strict than those for the surrounding area. The key element is that the

proposed zoning is different from the other zoning, "thus projecting an inharmonious land use pattern."[\[12\]](#) In sum, the heightened scrutiny of spot zoning applies when there is the appearance of possible discriminatory treatment (either favorable or negative) for a few, rather than a decision based on the larger public interest.

Factors in Validity

A local government adopting a "spot" zone has an affirmative obligation to establish that there is a reasonable public policy basis for doing so.[\[13\]](#) Thus the public hearing record should reflect consideration of legitimate factors for differential zoning treatment of the property involved. Does the property have different physical characteristics that make it especially suitable for the proposed zoning, such as peculiar topography or unique access to roads or utilities? Are there land uses on or in close proximity to the site that are different from most of the surrounding property? Would the proposed range of newly permissible development be in harmony with the legitimate expectations of the neighbors?

In *Chrismon* the court set out in detail four factors that are considered particularly important by the courts in determining whether there is a reasonable basis for spot zoning:

At the outset, we note that a judicial determination as to the existence or nonexistence of a sufficient reasonable basis in the context of spot zoning is, and must be, the "product of a complex of factors." The possible "factors" are numerous and flexible, and they exist to provide guidelines for a judicial balancing of interests. Among the factors relevant to this judicial balancing are the size of the tract in question; the compatibility of the disputed zoning action with an existing comprehensive zoning plan; the benefits and detriments resulting from the zoning action for the owner of the newly zoned property, his neighbors, and the surrounding community; and the relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts. Once again, the criteria are flexible, and the specific analysis used depends on the facts and circumstances of a particular case.[\[14\]](#)

A review of North Carolina litigation illustrates the application of these factors to spot zoning challenges of rezonings.

Size of Tract

The first factor to be considered in determining whether spot zoning is reasonable is the size of the tract. The general rule is that the smaller the tract, the more likely the rezoning will be held invalid. However, it is very important to consider the size of the tract in context: a 1-acre parcel may be considered large in an urban area developed in the 1920s, but very small in the midst of an undeveloped rural area.

The rezoning of an individual lot from a single-family and multifamily residential district to a business district was upheld in *Nelson v. City of Burlington*.[\[15\]](#) In this instance the majority of property directly across the street was already zoned for business use, and the court concluded that given

the prevalence of business zoning in the immediate vicinity of this lot, there was "some plausible basis" for the rezoning.^[16] However, a rezoning of 17.6 acres from residential agricultural to industrial was held to be spot zoning in *Budd v. Davie County*.^[17] was ruled impermissible spot zoning (the site was some four to five miles from the nearest industrial zone, with all of the intervening property being in residential districts). A 17.45-acre rezoning was ruled to be impermissible spot zoning in *Godfrey v. Union County Board of Commissioners*.^[18] This case involved a rural tract that was zoned for single-family residential use, as was all of the surrounding property, and the rezoning was to an industrial district. Similarly in *Alderman v. Chatham County*,^[19] the rezoning of a 14.2-acre tract from a residential district to a mobile home park, when the surrounding 500 acres were residentially zoned, was ruled to be spot zoning.

The fact that other small areas nearby have similar zoning to that proposed in a rezoning will not avoid a spot zoning label. The tract to be rezoned is considered in relation "to the vast majority of the land immediately around it."^[20]

Compatibility with Plan

The second factor in a spot zoning analysis is compatibility with the existing comprehensive zoning plan. This involves an inquiry into whether the rezoning fits into a larger context involving rational planning for the community. Whether set forth in a formal comprehensive land-use plan or reflected in an overall zoning scheme, zoning regulations must be based on an analysis of the suitability of the land for development (e.g., topography, soil types, wetland locations, and flood areas), the availability of needed services (e.g., water, sewers, roads, and rail lines), and existing and needed land uses. To the extent that a small-area rezoning fits into a logical preexisting plan that is clearly based on this type of analysis, it is much more likely to be upheld.

An example of a zoning scheme involving relatively small parcels that was judged acceptable because it fit the context of the land and the surrounding uses is found in the Zopfi case. The court upheld the rezoning of a 60-acre triangle formed by two major highways, into three zoning districts with decreasing density moving away from the point of the highway intersection. A 27.5-acre parcel at the point of the intersection was zoned commercial, the next 12 acres were zoned for multifamily residential use, and the remainder were zoned for single-family residential use. Similarly in the Nelson case the rezoning of a lot from single-family and multifamily residential use to business use was upheld on the basis that the majority of the property directly across the street was already zoned for business use.

A contrast is provided by situations in which there is no discernible reason to single out a small tract for differential zoning treatment. Several North Carolina cases illustrate this point.

In *Stutts v. Swaim*^[21] the town of Randleman had in 1967 zoned virtually all of its entire half-mile extraterritorial zoning jurisdiction (some 500 acres) for one- and two-family residences. An attempt in 1968 to rezone a 4-acre tract to a mobile-home zoning district, when there were no special characteristics present on that site, was ruled invalid spot zoning.

A similar situation was presented in *Lathan v. Union County Board of Commissioners*.^[22] In this 1980 case an 11.4-acre rezoning from residential to industrial use was ruled to be invalid spot zoning. A sawmill on the site was being operated as a nonconforming use, and the rezoning was necessary to accommodate the facility's expansion. The site had no access to major highways, rail lines, or public utilities, and the planning director concluded that industrial development would be incompatible with the surrounding residential community. Nevertheless the planning board recommended that the tract be rezoned as requested.^[23] The Union County commissioners agreed with the planning board's recommendation and adopted the rezoning. The adjacent landowner then sued and won in court. The court of appeals ruled that no special features on the tract made it any more suitable for industrial use than the surrounding property was. The rezoning was invalid spot zoning because there was no clear showing of a reasonable basis for the rezoning.

In *Godfrey v. Union County Board of Commissioners*,^[24] another Union County rezoning was successfully challenged on similar grounds. The comprehensive plan designated the area as a low-density residential district, and the nearest industrial uses were approximately a half mile away. The owner sought rezoning to heavy industrial use because he wanted to relocate a grain-bin operation to the site. The planning director recommended approval of the rezoning from residential to industrial use based on the site's accessibility to a major highway, a railroad, and public water. The planning board approved the recommendation, and it was narrowly adopted by the county commissioners. The court invalidated the rezoning, finding that the "whole intent and purpose . . . was to accommodate his plans to relocate his grain bins, not to promote the most appropriate use of the land throughout the community."^[25] The court acknowledged the availability of some services that would make this tract suitable for industrial development, but concluded that the same was true of the surrounding property and because this tract was "essentially similar," there was no reasonable basis for zoning it differently.

Mahaffey v. Forsyth County^[26] illustrates the growing importance of a formal comprehensive plan and the recommendations of the planning board in spot zoning analysis. In this 1990 case a 0.57-acre tract was rezoned from a residential and highway-business district to a general-business district (both the prior highway-business district and the new general-business district were special use districts). The comprehensive plan designated the area as "predominantly rural with some subdivisions adjacent to farms." The planning staff and the planning board recommended against the rezoning, but it was adopted by the board of commissioners. In ruling the action to be illegal spot zoning, the court pointedly noted, "[T]he County Planning Board and Planning Board Staff, made up of professionals who are entrusted with the development of and adherence to the comprehensive plan, recommended denial of the petition."^[27]

A similar result was reached in *Covington v. Town of Apex*,^[28] in which the rezoning of a single lot from office and institutional use to conditional-use business was held to be impermissible spot zoning. The court concluded that the rezoning contradicted the town's policies on location of industrial uses, as set forth in the comprehensive plan. The court also found minimal benefit to the public and substantial detriment to neighbors.

In *Budd v. Davie County*^[29] the rezoning of a fourteen-acre site along the Yadkin River, along with a half-mile long, sixty feet wide accessway, from residential-agricultural to industrial to

accommodate a sand mining operation was invalidated in part because it directly contradicted the previously adopted policies for the area. The zoning ordinance's stated intent for the Rural-Agricultural District was to maintain a "rural development pattern" with an aim "clearly to exclude commercial and industrial uses."^[30] Based on such considerations, the planning board twice recommended denial of the rezoning petition. The court held the rezoning was in direct contravention of the stated purpose of the comprehensive zoning scheme and this factored into invalidation of the rezoning.^[31]

On the other hand, consistency with a comprehensive plan can justify differential zoning for a small tract.

In *Graham v. City of Raleigh*,^[32] a 1981 case, the rezoning of a 19.3-acre tract from a residential to an office district was upheld in part based on the need to rezone the property in accordance with the nodal concept of development of Raleigh's comprehensive plan.^[33]

It should be noted that formal amendment of an inconsistent comprehensive plan is not necessarily required to avoid a finding of illegal spot zoning, though a reasonable basis for the deviation must be established. In *Purser v. Mecklenburg County*^[34] the court upheld a rezoning of a 14.9 acre tract from residential to a business conditional use district to allow construction of a neighborhood convenience center. The county's small area plan for the site indicated a nearby, but different site, was suitable for such a center. However, testimony at the public hearing indicated the suitability of the other site was dependent upon construction of as yet un-built roads and that shifting a center to the site in question would be consistent with the policies in the county's general development plan.

Benefits and Detriments

The third factor in spot zoning analysis is who benefits and who is harmed by the rezoning and what the relative magnitude of each consequence is. If the rezoning is granted, will it greatly benefit the owner? Will he or she be seriously harmed if it is denied? The same questions must be asked for the neighbors and the community at large, and then the effects on all three must be balanced. In a spot zoning challenge the courts, rather than the governing board alone, review and weigh the balance of harm and benefit created by the rezoning.

Although the court may be sympathetic to a situation in which there is considerable benefit to the owner and only modest harm to others, even a substantial benefit for the owner will not offset substantial harm to others. An example is found in the rezoning ruled invalid in *Blades*. This case involved rezoning a 5-acre tract in the midst of a large single-family zoning district to a multifamily district in order to allow twenty townhouses to be built. The court found that no reason was offered to treat this property differently and that considerable harm to the character of the existing neighborhood might result. ^[35]

The Chrismon case illustrates the other side of this analysis. The court noted:

[W]hile spot zoning which creates a great benefit for the owner of the rezoned property with only an accompanying detriment and no accompanying benefit to the community or

to the public interest may well be illegal, spot zoning which provides a service needed in the community in addition to benefiting the landowner may be proper.[\[36\]](#)

In *Chrismon* the rezoning of a 3-acre and a 5-acre tract from an agricultural district to a conditional-use industrial district in order to allow an agricultural chemical use was upheld. The court weighed the benefit to the owner, the harm to the immediately adjacent neighbor, the broad community support for the rezoning, and the need for these services within the surrounding agricultural community, and concluded that there were "quite substantial benefits created for the surrounding community by the rezoning."[\[37\]](#)

The benefits to the community must, however, be real and substantial, not merely convenient. For example, in the *Mahaffey* case it was argued that rezoning a 0.57-acre tract to allow establishment of an auto parts store would be beneficial to a rural community in which virtually everyone depended on automobiles. The court rejected this argument, noting, "[A]uto parts are a common and easily obtainable product and, if such a retail establishment were said to be 'beneficial to a rural community,' then virtually any type of business could be similarly classified."[\[38\]](#) Likewise, in *Budd* the court ruled generalized benefits from increased business activity related to operation of a sand mine did not offset harm to neighbors that would have been generated by substantial heavy truck traffic in a rural residential area.[\[39\]](#)

Relationship of Uses

The fourth factor in spot zoning analysis is the relationship between the proposed uses and the current uses of adjacent properties. The greater the disparity, the more likely the rezoning is to be held illegal.

This was a consideration in the court's invalidating the rezonings in the *Lathan*, *Godfrey*, and *Budd* cases, even though all three situations involved relatively large acreage (11.4 acres, 17.45 acres, and 17.6 acres respectively). In these cases the rezoning was from low density residential to industrial use. Given the magnitude of this change, the court looked closely for a supporting rationale and found none.[\[40\]](#) Likewise in the *Allred* and *Blades* cases, proposals to locate high-density multifamily projects in single-family residential neighborhoods were invalidated.

On the other hand, in the *Chrismon* case there was only a modest change in the allowed uses: the landowner could carry on the storage and the sale of grain under the original zoning; the rezoning allowed the storage and the sale of agricultural chemicals. Further, the site was in the midst of an agricultural area that needed such services. Thus the court could conclude:

. . . [T]his is simply not a situation . . . in which a radically different land use, by virtue of a zoning action, appears in the midst of a uniform and drastically distinct area. No parcel has been "wrenched" out of the Guilford County landscape and rezoned in a manner that "disturbs the tenor of the neighborhood." . . . In our view, the use of the newly rezoned tracts . . . is simply not the sort of drastic change from possible surrounding uses which constitutes illegal spot zoning.[\[41\]](#)

Another factor is that limitations on the proposed uses included within the zoning approval can be an important factor in minimizing adverse impacts on neighboring properties. For example, a conditional use district rezoning to allow a neighborhood convenience center was upheld in *Purser* in part because "the development of the Center was governed by a conditional use site plan that was designed to integrate the Center into the neighborhood and insure that it would be in harmony with the existing and proposed residential uses on the surrounding property."^[42]

A change in the conditions is not required to justify a rezoning in North Carolina, but it can be an important factor in establishing that a proposed new zoning classification is compatible with surrounding land uses. For example, in *Allgood v. Town of Tarboro*,^[43] a rezoning of a 25-acre tract from residential to commercial use was upheld in part on the basis that in the eight years between the initial adoption of zoning and the challenged rezoning, the surrounding area had substantially changed because of the expansion of an adjoining road, the extension of water and sewer lines, the construction of a school and an apartment complex nearby, and the annexation of the site by the city.

^{1.} For an overview of national spot zoning cases, see 1 KENNETH H. YOUNG, ANDERSON'S AMERICAN LAW OF ZONING §§ 5.12 to 5.22 (4th ed. 1996); 3 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING §§ 28.01 to 28.05 (4th ed. 1998).

^{2.} N.C. CONST. art. I, § 32.

^{3.} N.C. CONST. art. I, § 34.

^{4.} N.C. CONST. art. I, § 19. The "law of the land" provision of section 19 is the equivalent of the due process clause of the Fourteenth Amendment of the U.S. Constitution. See Chapter 8 for a discussion of constitutional issues.

^{5.} G.S. 153A-341, 160A-383.

^{6.} 254 N.C. 85, 89, 118 S.E.2d 1, 4 (1961).

^{7.} 273 N.C. 430, 160 S.E.2d 235 (1968).

^{8.} *Id.* at 437, 160 S.E.2d at 332.

^{9.} 280 N.C. 531, 187 S.E.2d 35 (1972).

^{10.} *Id.* at 549, 187 S.E.2d at 45.

^{11.} 2 E. C. YOKLEY, ZONING LAW AND PRACTICE § 13-3 at 207 (4th ed. 1978), *quoted with approval* in *Chrismon v. Guilford County*, 322 N.C. 611, 626, 370 S.E.2d 579, 588 (1988).

^{12.} *Id.* See also *Dale v. Town of Columbus*, 101 N.C. App. 335, 399 S.E.2d 350 (1991).

13. Professor Phil Green summarized this point as follows: "I would like to suggest that at root 'spot zoning' is nothing but giving special treatment to one or a few property owners, without adequate justification. . . . If there is a reasonable basis for treating particular property differently from nearby or similar property, that should be enough to support the validity of the zoning." Philip P. Green, JR., **Questions I'm Most Often Asked: What Is "Spot Zoning"?**, 51 POPULAR GOV'T 50, 50 (Summer 1985).

14. 322 N.C. at 628, 370 S.E.2d at 589 (citations omitted).

15. 80 N.C. App. 285, 341 S.E.2d 739 (1986).

16. *Id.* at 288, 341 S.E.2d at 741.

17. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

18. 61 N.C. App. 100, 300 S.E.2d 273 (1983). *Cf. Rose v. Guilford County*, 60 N.C. App. 170, 298 S.E.2d 200 (1982), in which the court held that summary judgment was inappropriate when the rezoning of a 100-acre tract from an agricultural to a residential district that allowed mobile homes was challenged as arbitrary and capricious on spot and contract zoning grounds.

19. 89 N.C. App. 610, 366 S.E.2d 885, *rev. denied*, 323 N.C. 171, 373 S.E.2d 103 (1988). The fact that an adjacent 16-acre tract owned by the same person had been rezoned to a mobile home park some eleven years earlier did not change the court's conclusion that this was spot zoning.

20. *Mahaffey v. Forsyth County*, 99 N.C. App. 676, 682, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991). *But see Orange County v. Heath*, 278 N.C. 688, 180 S.E.2d 810 (1971), in which the court held that rezoning a 15-acre tract from a residential district to a mobile home park was not spot zoning because it adjoined a 5-acre tract already in legal use as a mobile home park.

21. 30 N.C. App. 611, 228 S.E.2d 750, *rev. denied*, 291 N.C. 178, 229 S.E.2d 692 (1976). There were two preexisting mobile home parks in the extraterritorial zoning area, both of which were zoned for mobile home use. One was three-fourths of a mile from this tract, the other two-and-one-half miles. The litigation was initiated some five-and-a-half years after the contested rezoning. The court applied a traditional laches analysis and allowed the litigation. G.S. 160A-364.1, which establishes a nine-month statute of limitations for challenging rezonings, was subsequently adopted.

22. 47 N.C. App. 357, 267 S.E.2d 30, *rev. denied*, 301 N.C. 92, 273 S.E.2d 298 (1980). **23.** The planning board's reasons for a favorable recommendation were "(1) Because of how long it has been there. (2) You can't tell a man that he can't grow and will have to go up U.S. 74 to expand. (3) How long they have had the land." *Id.* at 359, 267 S.E.2d at 32.

24. 61 N.C. App. 100, 300 S.E.2d 273 (1983). **25.** *Id.* at 104, 300 S.E.2d at 275. The court concluded that the rezoning constituted improper contract zoning as well as improper spot zoning.

26. 99 N.C. App. 676, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

27. *Id.* at 683, 394 S.E.2d at 207.

28. 108 N.C. App. 231, 423 S.E.2d 537 (1992).

29. 116 N.C. App. 168, 447 S.E.2d 438 (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

30. *Id.* at 175.

31. However, the governing board's attempted rezoning would have made this policy, which applied to all land zoned R-A, inapplicable to this site. An argument can be made then that the rezoning is not inconsistent with the policies in the zoning ordinance. This re-emphasizes the importance of being able to point to a comprehensive plan or other planning studies, reports, and policies extrinsic to the zoning ordinance itself.

32. 55 N.C. App. 107, 284 S.E.2d 742 (1981), *rev. denied*, 305 N.C. 299, 290 S.E.2d 702 (1982).

33. The character of the surrounding neighborhood was also a factor in *Finch v. City of Durham*, 325 N.C. 352, 384 S.E.2d 8 (1989), though the spot zoning issue was not explicitly addressed in this taking challenge. The rezoning from commercial to residential use, which was upheld in a taking challenge, was supported by policies of protecting an adjacent residential neighborhood and limiting commercial development to the opposite side of the adjacent interstate highway.

34. 127 N.C. App. 63, 488 S.E.2d 277 (1997).

35. *See also Covington v. Town of Apex*, 108 N.C. App. 231, 423 S.E.2d 537 (1992), *rev. denied*, 333 N.C. 462 (1993) (invalidating rezoning of former post office site adjacent to a residential neighborhood to an industrial district to accommodate an electronic assembly operation).

36. 322 N.C. 611, 629, 370 S.E.2d 579, 590 (1988).

37. *Id.* at 633, 370 S.E.2d at 592.

38. 99 N.C. App. 676, 683, 394 S.E.2d 203, 208, *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991).

39. 116 N.C. App. 168, 175-77, 447 S.E.2d 438, ___ (1994), *rev. denied*, 338 N.C. 524, 453 S.E.2d 179 (1995).

40. *See also* Mahaffey v. Forsyth County, 99 N.C. App. 685, 394 S.E.2d 203 (1990), *rev. denied*, 327 N.C. 636, 399 S.E.2d 327 (1991) (holding that auto parts store allowed by rezoning was significantly different from existing surrounding use as rural residential neighborhood).

41. 322 N.C. at 632, 370 S.E.2d at 591-592.

42. 127 N.C. App. 63, 70-71, 488 S.E.2d 277, 282 (1997).

43. 281 N.C. 430, 189 S.E.2d 255 (1972).

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