UNREASONABLE ZONING ACTION "SPOT ZONING"

To the extent that a municipality's exercise of this power in the field of land use zoning is regulated by enabling legislation, it is clear that the procedures set forth in that legislation must be followed. ***State v. Thomasson***, 61 Wn.2d 425, 378 P.2d 441 (1963); ***State ex rel. Kuphal v. Bremerton,*** 59 Wn.2d 825, 371 P.2d 37 (1962); and 8 McQuillin, Municipal Corporations (3rd ed.) §§ 25.249 - 25.251. In addition, however, it is critical here to note and understand that as with any exercise of the police power, municipal zoning is subject not only to an affirmative requirement implicit in Article XI, § 11 itself that it only be exercised ". . . in the interests of the health, safety, morals and general welfare of the people affected . . ." but it is subject, as well to certain negative restraints arising, principally, from the due process and equal protection clauses of both the federal and state Constitutions. As stated in ***Peterson v. Hagan***, 56 Wn.2d 48, 351 P.2d 127 (1960), with respect to the latter:

"We reject flatly the argument that the due process and equal protection clauses of the federal and state constitutions do not apply to statutes enacted in the exercise of the police power. Otherwise, the result would be a police state, and the legislative branch of the government would be omnipotent.

"The United States supreme court specifically decided that police regulations were subject to the equal protection clause of the fourteenth amendment in Atchison, ***Topeka & Santa Fe R. Co. v. Vosburg***, 238 U.S. 56, 59 L.Ed. 1199, 35 S.Ct. 675. The reasons for that conclusion were stated as follows:

'". . . But we cannot at all agree that a police regulation is not, like any other law, subject to the "equal protection" clause of the Fourteenth Amendment. Nothing to that effect was held or intimated in any of the cases referred to. The constitutional guaranty entitles all persons and corporations within the jurisdiction of the State to the protection of equal laws, in this as in other departments of legislation. It does not prevent classification, but does require that classification shall be reasonable, not arbitrary, and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation. . . ."'

Both of these sets of constitutional bench marks are, moreover, of considerable significance insofar as the validity of any zoning ordinance is concerned. Because zoning regulations result from an exercise of the police power and, thus, may only be adopted in furtherance of the health, safety, morals and general welfare of the people affected, it has generally come to be understood that behind any such regulations there should be some element of planning. Statutorily, in the case of chapter 36.70 RCW (as under most other modern types of planning enabling legislation) this has led to a requirement that the zoning code of a county operating under this act is to ". . . further the purpose and objectives of a comprehensive plan . . ." See, RCW 36.70.570 together

with RCW 36.70.020 (6), which specifically defines this term to mean:

". . . the policies and proposals approved and recommended by the planning agency or initiated by the board and approved by motion by the board (a) as a beginning step in planning for the physical development of the county; (b) as the means for coordinating county programs and services; (c) as a source of reference to aid in developing, correlating, and coordinating official regulations and controls; and (d) as a means for promoting the general welfare. Such plan shall consist of the required elements set forth in RCW 36.70.330 and may also include the optional elements set forth in RCW 36.70.350 which shall serve as a policy guide for the subsequent public and private development and official controls so as to present all proposed developments in a balanced and orderly relationship to existing physical features and governmental functions."

Secondly, because the essence of municipal zoning is classification - i.e., the division of land into districts, with the land in each district being subjected to different regulations concerning its use - it is inherently at all times in potential conflict with those constitutional guarantees of equal protection which are contained in both the 14th Amendment to the United States Constitution (referred to in the above-quoted excerpt from ***Peterson v. Hagan***) and in Article I, § 12 of our own state Constitution which provides that:

"No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

Your question, which we may now begin to consider directly in the light of the foregoing precepts, involves a particular type of zoning activity which has commonly come to be known as "spot zoning" - a somewhat misunderstood term, we should initially note and underscore. As stated in 51 A.L.R.2d at p. 266:

"The student of the 'spot zoning' cases is faced at the outset with a problem of terminology. This results from the fact that the term 'spot zoning' is used in many instances as a label for the conclusion reached by the court, that is, whether or not the zoning ordinance under consideration is valid. Other courts, however, and sometimes the same courts at other times, use the term 'spot zoning' in a merely 'descriptive' sense. And in still other instances the term is used as a mixed 'descriptive' and 'legal' term."

The problem is basically one of semantics. Read or interpreted literally, the phrase "spot zoning" as a purely descriptive term has a tendency to conjure up a vision of any zoning action the effect of which is to carve out a relatively small area situated within a larger whole and to treat that small area differently. But while this is most certainly one of the requisite elements of what we

will hereinafter for purposes of clarity refer to as illegal spot zoning, it is by no means the only element. In other words, the mere fact that a zoning ordinance or an amendment thereto does single out for special treatment a small area (the spot) within a larger land unit will not, in and of itself, render the ordinance or amendment invalid. In order to constitute an instance of illegal spot zoning there must also be certain other factors present, and the primary reason for our somewhat detailed preliminary review of the constitutional basis for, and restraints upon, municipal zoning activities was to enable us now to place these other factors in proper focus.

Although this has not always been fully spelled out by the Washington court in its decisions dealing with spot zoning, the additional facts which must be shown in order to establish a case of illegal spot zoning stem, by and large, from a combination of (a) the constitutional prohibition against invidious or irrational discrimination which is contained in both the equal protection clause of Amendment 14 to the United States Constitution and in **Article I, § 12 of the Washington Constitution**, supra, and (b) the principle derived from Article XI, § 11, supra, that a basic function of any zoning regulation adopted under an enabling act such as **chapter 36.70 RCW,** supra, is to implement and carry out, rather than to frustrate, an underlying, previously adopted, comprehensive plan for the orderly development of the subject county or other municipality.

In order both to exemplify this point and to identify and verbalize the nature of these additional factors let us now turn to the significant cases themselves, all of which have been decided within the last ten or so years, beginning with ***Pierce v. King County***, supra. At issue in that case was an amendment to the King county zoning code rezoning two lots within the heart of a neighborhood of single family residences so as to permit those lots to be used for a gasoline service station. In considering the validity of this amendment the court first asked of itself the following questions:

"Do we have here a spot zoning? Is it spot zoning of such a character as to be deemed an arbitrary and capricious legislative act?"

Then, in order to set the stage for its answers to these questions - with primary emphasis upon the second one - the court quoted at length from several text writers' definitions of this term, saying:

"The concept of spot zoning as an evil in the field of municipal growth is well recognized by nearly all authorities.

"'Spot zoning is an attempt to wrench a single lot from its environment and give it a new rating that disturbs the tenor or the neighborhood, and which affects only the use of a particular piece of property or a small group of adjoining properties and is not related to the general plan

for the community as a whole, but is primarily for the private interest of the owner of the property so zoned; and it is the very antithesis of planned zoning. It has generally been held that spot zoning is improper, and that one or two building lots may not be marked off into a separate district or zone and benefited by peculiar advantages or subjected to peculiar burdens not applicable to adjoining similar lands.' 101 C.J.S., Zoning § 34.

"A well supported statement is also found in 2 Metzenbaum, Law of Zoning (2d ed.) chapter X-m-(5):

"'"Spot Zoning" is not usually favorably regarded, because, in too many instances, such practice has been employed in order to aid someone owner or parcel or someone small area, rather than being enacted for the general welfare, safety, health and well-being of the entire community. . . . '" . . .

'"Spot zoning" merely for the benefit of one or a few or for the disadvantage of some, still remains censurable because it is not for the general welfare . . .'

"The noted authority on municipal law, Charles S. Rhyne, states:

'"Spot zoning" has come to mean arbitrary and unreasonable zoning action--commonly by an amendment to a zoning ordinance, but also by the zoning ordinance itself, or, less commonly, by grant of a permit for a use other than the regular zone uses-- by which a lot or small area is singled out and specially zoned for a use classification totally different and inconsistent with the classification of surrounding land indistinguishable from it in character, thus creating a mere island or ***"spot"*** *non-conforming [[nonconforming]]use within the larger use zone, with a resulting new rating that disturbs the tenor of the neighborhood.* ***"Spot zoning"*** *is thought of as zoning not in accordance with a comprehensive plan, but for mere private gain to favor or benefit a particular individual or group of individuals and not the welfare of the community as a whole, and thus in effect granting by amendment, a special exception or variance from general regulations.* ***"Spot zoning"*** *of this nature has been found unauthorized, discriminatory, and invalid and an unlawful usurpation of the power to grant a variance. . . .'*
Rhyne, Municipal Law, chapter 32, p. 810, 825."