

To: Jeremy DeCarli  
From: Rich Carella  
Re: PZC 19-010 St. Clements Castle Zone Change – Legal Opinion  
Date: December 3, 2019

St. Clements seeks to rebuild an assembly hall to be used as part of its event facility, the main campus of which is located on the adjacent property it owns in Portland. The parcel in question is the location of the old marina at 49 Oakum Dock, and historically has been used for commercial purposes, including the most recent use by St. Clement as a banquet facility. In order to rebuild the assembly hall and conduct its commercial activities on this location, the property requires a zone change from R-2 to Commercial, as well as a special permit.

The question has arisen whether a change of the zone for this property would constitute “spot zoning.” It is my opinion that if the Planning and Zoning Commission approves the change of zone from R-2 to Commercial based upon the Town’s comprehensive plan, then such decision would not constitute “spot zoning.”

The Town acts within its broad, prescribed police powers when it rezones a property. Conn. Gen. Stat. § 8-2; see *First Hartford Realty Corp. v. Plan & Zoning Comm’n of Town of Bloomfield*, 165 Conn. 533, 540 (1973) (“[C]ourts cannot substitute their judgment for the wide and liberal discretion vested in local zoning authorities when they have acted within their prescribed legislative powers.”).

Spot zoning claims may occur when a tract of land is zoned to permit a more intensive use, such as changing a parcel’s zoning designation from residential to commercial use. Connecticut case law has defined spot zoning as “the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood.” *Morningside Assn. v. Planning & Zoning Board*, 162 Conn. 154, 161 (1972) (internal citation and quotation marks omitted). However, in my opinion an approval of the change of zone for 49 Oakum Dock from R-2 to Commercial would not “disturb the tenor of the surrounding neighborhood” as the commercial uses historically operated upon this location (a commercial marina, and a commercial banquet facility) have existed through the decades during which time the surrounding residential properties have been developed.

Moreover, in recent years the “spot zoning concept has become obsolete because the size of the parcel involved in a zone change is immaterial if the commission’s actions meets the two part test for a zone change: (1) The zone change is in accordance with the comprehensive plan and (2) It is reasonably related to the normal police power purposes in § 8-2 of the General Statutes.” R. Fuller, 9 *Conn. Practice Series: Land Use Law & Practice* (2019) § 4:8 (citing *First Hartford Realty Corp. v. Plan & Zoning Comm’n of Town of Bloomfield*, 165 Conn. 533, 541 (1973)).

Thus, if the Commission acts in accordance with the comprehensive plan, and its decision is reasonably related to its normal police powers, it does not matter if the parcel being re-zoned is a small single parcel.

The comprehensive plan consists of the zoning regulations themselves and the zoning map established pursuant to such regulations. *Loh v. Town Plan & Zoning Comm'n of Town of Fairfield*, 161 Conn. 32, 36 (1971). “A ‘comprehensive plan’ means a general plan to control and direct the use and development of property in a municipality or a large part of it by dividing it into districts according to the present and potential use of the properties . . . .” *Gaida v. Planning & Zoning Comm'n of City of Shelton*, 108 Conn. App. 19, 32 (2008).

In addition to the zoning regulations and the zoning map, the Town’s Plan of Conservation and Development (the “POCD”) is part of the overall comprehensive plan. While the POCD standing alone is merely advisory, the Town’s zoning regulations state in section 1.2, that the regulations “are adopted for the purposes of: 1. Guiding the future growth and development of the Town in accordance with the Plan of Conservation and Development.” Thus, the POCD is part of the Town’s comprehensive plan along with the zoning regulations and zoning map. A court should uphold the rezoning if it is consistent with the comprehensive plan. *Blaker v. Planning & Zoning Comm'n of Town of Fairfield*, 212 Conn. 471 (1989).

Section 1.2 of the Zoning Regulations provides the “Purposes” of the zoning regulations. This includes “guiding growth” in accordance with the POCD (Sec 1.2.1), protecting the “stability” of the Town and ensure that development is “orderly and beneficial” (Sec. 1.2.3) and “bringing about the gradual conformity of uses” (Sec. 1.2.5). The Commission, if it were to approve a change of the zoning designation at 49 Oakum Dock from R-2 to Commercial, could find support in such a decision based upon following a comprehensive plan which seeks to promote guiding growth, providing stability and promoting orderly development, and bringing about the gradual conformity of uses. This is because the current day and historic uses for this parcel have been commercial uses for decades. Rather than upsetting the tenor of the neighborhood or overwhelming the parcel’s use, in this case the neighborhood of residences has evolved around the commercial uses. Changing the zone on this parcel from R-2 to Commercial would not increase the intensity of its use; rather it would give the Town the ability to promote the parcel’s orderly development by way of a special permit which would permit the current commercial use and regulate its intensity by special permit conditions. This would bring about the gradual conformity of uses on this parcel as the comprehensive plan envisions.

In addition, page 78 of the POCD indicates that the end of Oakum Dock should be used as a “community facility” boat launch. This suggests that a possible commercial use has already been contemplated by the Town, and will not corrupt the integrity of the neighborhood. The POCD also acknowledges the need for increased recreation capacity along the Connecticut River on

page 84. A zone change to Commercial would support this aspect of the POCD because the parcel could be used to expand the marina functions of this site in the future, to provide recreational access to the River. Although the Plan contemplates working with CT DEEP and Middlesex Land Trust to identify public lands for this purpose, the Town could allow an expanded marina use for recreational purposes if this parcel were zoned Commercial. This would not be possible if the parcel were to remain in an R-2 zone.

Support for this view of approving a zone change to promote gradual conformity of uses can be found in *Suffield Heights Corp. v. Town Planning Comm'n of Town of Manchester*, 144 Conn. 425, 429 (1957). In *Suffield*, the plaintiff challenged the commission's denial of its zone change application. The commission denied the application because it "would result in 'jutting a Business Zone into a Residential area.'" *Id.* at 427. The commission also noted that "[t]he plaintiff's land [was] zoned residence A and is bounded on three sides by other lands also zoned residence A." *Id.* The land abutted a business zone on the north side of the property, however, and the plaintiff sought the zone change for additional parking to service the commercial area. *Id.* The court overturned the denial and found "invalid" the defendants argument that allowing the zone change would not be in furtherance of the comprehensive plan, and that "the land for which the change in zone was sought was unsuitable for residential use and 'entirely unfit for any other use but business.'" *Id.* at 428. Such is the case here, where the Commission could support a change of zone to Commercial by concluding that the current and historic use of the parcel for commercial purposes better serves the comprehensive plan than keeping the current R-2 zone.

Another court sustained a plaintiff's appeal after the commission denied the zone change request. See *Pond View, LLC v. Monroe Planning & Zoning Comm'n*, 2006 WL 2193160 (Conn. Super. Ct. July 18, 2006). In *Pond View*, the plaintiff sought a zone change from residential to commercial; the plaintiff's property was located on Route 25, which had commercial property on both sides. Several surrounding landowners came forward with concerns, including protest petitions and environmental intervention petitions. The court found that the commission's denial was arbitrary and void because the zone change was largely consistent with the comprehensive plan and plan of conservation and development. In this case, 49 Oakum Dock is similar to the parcel in *Pond View* because, as the town planner stated, the site proposal "uses the site for what is a more realistic or practical use than what the present zoning contemplates . . . ." Indeed, each of the relevant town agencies in *Pond View* approved the change except the planning and zoning commission.

For the foregoing reasons, if the Planning & Zoning Commission decides to change the zone on 49 Oakum Dock from R-2 to Commercial, and such decision is consistent with the comprehensive plan, such a decision would not be consider "spot zoning."