

October 11,2003

Mr. David Moskin, Chair
Board of Selectmen
100 Middle Street Hadley, MA 01035

RE: Spot Zoning Dear Chairman Moskin:

I am writing you this request for legal review as it has come to my attention that the town may be in violation of the law in regards to Spot Zoning, and that these issues would be better treated under the town's on-going, comprehensive planning process. This would also conform to impending legislation that would revamp the State's zoning laws.

As you know, I chair the Hadley Long Range Planning Committee, charged by the town to develop a comprehensive long-range plan for the town. The Committee's work is funded by town monies and a \$30,000 State grant through Executive Order 418 and the Community Development Planning program. The Committee's work has been unanimously supported on town floor each time we have come for a vote. We anticipate completing a comprehensive plan by May 2004, and to put forward by-laws through the Planning Board for approval by town meeting based on the comprehensive plan by May 2005. As you know, the Planning Board is sponsoring a Building Moratorium warrant article at this Fall town meeting to postpone building permits for large scale or rapid development until May 2005, when any new by-laws would come into effect.

In the last three years, two articles have come before town meeting that appear to fall under Spot Zoning, and which may be unlawful. First, I refer to the rezoning of the residential/agricultural parcel to the northwest of the intersection of North Maple Street and Route 9. Three years ago, the land owner through a petition requested a special town meeting with the expressed purpose to reclassify a parcel of land in the Agricultural/Residential district to a Business classification. This was done at the land owner's request to allow the land to be sold to a developer so that a Home Depot store, including roughly 330,000 square feet of retail mall, could be developed on his combined property. This passed by vote of the special town meeting. The second issue involves the rezoning of another parcel in the Agricultural/Residential district, approximately 1 mile from the aforementioned property, with the express purpose by the land owner to sell the property at increased value to a developer for development of a Lowes big box store. He mentioned at Board of Selectmen, Planning Board, and town meetings that this was necessary to "save his Bison Farm". This was rejected by the special town meeting in August 2003. However, the Planning Board has resubmitted the issue as a warrant article for Fall Town Meeting October 23, with the argument now that it would be better to place the store on a deeper parcel (1200 foot versus 500 foot) for better landscaping and aesthetics.

In both cases, it could be argued that the purposes of these by-law amendments are solely to confer an economic benefit upon the owners of comparatively small areas within the

agricultural/residential district when the remaining parcels of that agricultural/residential district are treated differently (arc not changed to a Business district classification). It is hard to find how the rezoning of these small areas within the agricultural/residential district was or is being done to effect the “public health, the public safety, and the public welfare”. Lastly, it is certainly not being done under our comprehensive planning process, nor does it seem to stand on “rational planning objectives”. The Long Range Planning Committee is considering several alternatives that would stimulate further economic development in town and along Route 9, but is taking an integrated planning approach to include traffic and transportation planning, land use and resource protection, and the impact to municipal services. We are being assisted by our planning consultant, Daylor Consulting Group, Braintree.

I am enclosing for your information an Appeals Court of Massachusetts case, *W. R. Grace & CO-CONN. & another vs. Cambridge City Council*. 56 Mass. Ape. Ct. 559: 779 N.E. 2d 141: 2002 Mass. Ape., decided November 25, 2002. I quote several sections from the case; the extra bracket signs are quotes from the appeal case referring to previous case law findings:

.the Zoning Act generally permits cities and towns to adopt any zoning provisions which are constitutionally permissible. The constitutional test is whether the by-law is ‘clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare’... Zoning authority ‘rests for its justification on the police power, and that power is to be asserted only if the public health, the public safety, and the public welfare, as those terms are fairly broadly construed, will be thereby promoted and protected. A zoning by-law will be sustained unless it is shown that there is no substantial relation between it and the furtherance of any of the general objects just mentioned’...It is unlawful to invoke the zoning power solely to confer an economic benefit (or impose an economic detriment) upon the owner of a comparatively small area within a zoning district when the remaining parcels of that district are treated differently... Where a rezoned area is not ‘sufficiently differentiated’ from other surrounding land to support a change in the established classification, that rezoning is a violation... ‘The vice is the singling out of a particular parcel for different treatment from that of the surrounding area, producing without rational planning objectives, zoning classifications that fail to treat like properties in a uniform manner’

The following is a key statement directly from the appeal court justices:

“Underlying these principles is the requirement that zoning differentiations be adopted in the service of some defensible public interest, not merely to benefit or harm a particular parcel....’ Spot zoning does not occur unless it is shown that a parcel has been singled out from similar surrounding parcels ‘all for the economic benefit of the owner of that lot”.

It is in this statement that the court appears to provide an umbrella over all previous court findings and makes a general argument of “differentiation” and “singling out”, expanding upon the narrow terms of of previous cases to a broader term of d~fferent treatment. An argument could be made that this would include not only reclassification, but a moratorium on construction

affecting only a small area of a zone, or increasing the width of a Business district to encompass a small area within an agricultural/residential zone with the express purpose of economic gain by the land owner.

As Chair of the Long Range Planning Committee, I request that Town Counsel be consulted on the appropriateness of this case and the Appeals Court definition of Spot Zoning as it applies to the recent by-law amendments referred to above. As a reasonable person may interpret these provisions, one can not see why saving the Bison Fann, landscaping, or allowing a landowner to increase its economic gain to reclassify his or her residential property within a larger residential zone to make it more appealing for purchase by a big box developer, with the resultant impact on wetlands, traffic congestion, traffic accidents, air emissions, and the potential impact to the underlying Aquifer Protection District, is in either the “public health, the public safety, and the public welfare”, or is part of some rational planning objectives of a comprehensive planning process.

Your timely response before Fall Town Meeting is greatly appreciated. I wish only to ensure that town by-laws stand firmly upon law and not potentially arbitrary criteria.

Sincerely yours.

John A. Mathews
Chair, Hadley Long Range Planning Committee

Cc: Planning Board Conservation Commission
Massachusetts Attorney General