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Foothill Communities v Orange County: Justifying Spot Zoning

Roger Bernhardt

Golden Gate University School of Law, rbernhardt@ggu.edu

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THE EDITOR'S TAKE: Existing residents of upscale areas who hope to keep their surroundings free of new developments that they fear may degrade their attractiveness are likely to find their ability to do so reduced by this decision.

In this case, a church proposed to construct a senior housing project on seven acres of land that had been donated to it. Since such a project did not qualify for any kind of "as of right" approval under the applicable general or specific plans—which had been written back in 1982, when no one was thinking about elder housing—those plans had to be amended to justify creation of a new zoning classification for that kind of housing, and the zoning ordinance and map had to be amended to designate the church's land with the new label. Local government officials were willing to take all these steps, but the neighbors were not.

The resisting neighbors had many persuasive-sounding challenges. Amending a general plan is always a more suspect activity than its original enactment, and judicial review inevitably takes into account—even if only implicitly—apprehension as to whether the change was truly dictated by bona fide considerations (such as discovering an original mistake or seeing a recent change of circumstances) rather than a desire to do a favor for a friendly supporter. The change becomes even more suspicious when its purpose is not to make an across-the-board amendment but is instead designed to enable the reclassification of a single piece of land. Planning and zoning are supposed to treat all properties in a district uniformly, which is the exact opposite of what happens when a single parcel is rezoned and everything else is left the way it was. (In other states, those considerations often lead courts to treat the rezoning as an adjudicative rather than a legislative act, even though done by elected officials; in California, however, it is called "quasi-legislative," which gives it the benefit of subjecting it to review by ordinary mandamus, with its loose "arbitrary and capricious" standard, rather than by administrative mandate and the more stringent "substantial evidence" test.)

Project opponents often succeed when they can persuade judges to label the government's action as "spot zoning"—what this court calls "irrational discrimination"—making the rezoning sound ipso facto bad. Whether up spot zoning or down spot zoning, treating one parcel of land differently from all others just does not seem compatible with the concept of a "general" plan or with our constitutional requirement of equal protection. What makes this decision noteworthy is the court's determining that this was spot zoning without thereupon leaping to the conclusion that it was therefore automatically bad. Once the spot zoning label was not allowed to itself decide the case (as apparently it did at trial), it was easy for the court to go on to decide that the changes were not arbitrary or capricious, even though only one spot was involved.

When zoning laws first got started, worries about constitutional legitimacy were serious enough as to make the early enabling acts and zoning ordinances apply as uniformly within districts as possible. But that was 90 years ago; the way land use regulation is managed nowadays makes it look much more like horse trading than policy-driven legislating, but we have all gotten quite used to it.—*Roger Bernhardt*