

# LAYING DOWN THE LAW

## Straight Talk On Developments Important To You

### Spot On: Court Upholds Milford's "Donut District"

Excluding a parcel of property from a new zoning district may be proper, even if completely surrounded by the newly created district. Over the past eight years, Donna Dutko has filed a number of appeals relating to a 2003 Milford Planning and Zoning Board decision to exclude her property from the newly created Milford Center Design Development District (MCDD). In June, the Superior Court upheld the Board's decision. (See *Donna Dutko v. Milford Planning & Zoning Board, et al.*, 2011 Conn. Super. LEXIS 1596)

The saga began in December of 2003 when the Planning and Zoning Board for the City of Milford amended the City's zoning regulations to create the MCDD. The MCDD was a newly created zoning district which permitted mixed uses, including multifamily residential and commercial uses. The Board declined to extend the regulation to include Ms. Dutko's property and other adjacent residential properties, which geographically happened to be surrounded by the new zone.

Ms. Dutko's first two attempts to appeal the decision of the Board were dismissed. The crux of her third appeal claimed that the Board abused its discretion by creating a "donut" around a very small residential zone, which is out of harmony with the comprehensive zoning scheme. In addition, she claimed that excluding her property from the surrounding MCDD was tantamount to illegal spot zoning. (Spot zoning is the reclassification of a small area of land in such a manner as to disturb the tenor of the surrounding neighborhood. An example of spot zoning might be the reclassification of a single structure in a commercial district as residential or vice versa.) According to Ms. Dutko, the Board's exclusion of her property from the MCDD had the same effect as if the Board had reclassified her property differently than the surrounding parcels in the zone.

The trial court's June 2011 decision contains a detailed explanation of the Board's legislative function of creating zones and adopting zoning regulations. The court noted that the board enjoys substantial freedom in determining whether or how to amend its regulations whenever reasonable planning for present or future conditions indicates a need for change. The court cited long established precedent holding that the Board's discretion is wide and liberal and should not be disturbed unless the Board acted illegally or arbitrarily.

Relying on the foregoing, the court found that the Board did not act arbitrarily in determining to exclude Ms. Dutko's property from the MCDD zone. The record of the Zoning Board demonstrated several requests from a number of residents that the board keep Ms. Dutko's property out of the zone for historical preservation purposes and therefore the Board's discretion on which properties to include in the new MCDD had at least some legitimate basis.

Addressing Ms. Dutko's second issue, the court found that the Board did not engage in illegal spot zoning. Ms. Dutko complained that the board's refusal to rezone her property, thereby preserving the property's designation as residential, constituted spot zoning. The court held that in order for spot zoning to occur, there must be a reclassification of the property. Here, because there was no reclassification of Ms. Dutko's property, the court found the allegations of illegal spot zoning lacked merit.

What's the moral of this story? As long as the record provides some legitimate basis for the Board's decision, it will be nearly impossible for a property owner to demonstrate that a zoning board abused its discretion in establishing new zones or redesigning existing zoning schemes within a zone.

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