

February 25, 2019

Honorable Mayor Shelly Petrolia  
City of Delray Beach Florida  
Office of the Mayor  
100 NW 1<sup>st</sup> Ave  
Delray Beach, FL 33483  
[Petrolia@mydelraybeach.com](mailto:Petrolia@mydelraybeach.com)

*Via E-mail and Hand Delivery*

**RE: Proposed Rezoning Application – Ordinance No. 14-19, Collier Car Club**

Dear Mayor Petrolia:

I grew up in the seaside village of Delray Beach and would like to express concern regarding the above referenced Rezoning Application currently being requested for consideration by the City's Development Services Department and City Commissioners.

I have been party to in the capacity of a resident of such rezoning and planning efforts in the area and have seen the good and the not so good take place. Unfortunately for the applicant of tonight's hearing and application, there are several large "holes in the cheese".

After careful review of the application, one might ask a simple first question:

### **Is this "spot zoning"?**

There is an article I have attached to this letter from the Michigan State University explaining the (4) characteristics of Spot Zoning and what a municipal body must consider to shield themselves from future legal precedence that may be indirectly established by granting such requests for the single property owner without consideration of the other City's residents, owners and future developers of the properties in similar zoning situations. As the article states, "One illegal form of rezoning is spot zoning." Please find an outline of the Four Criteria of Spot Zoning below:

#### **The Four Criteria Illegal Spot Zoning**

- 1) The spot zone would confer a special benefit on the individual property owner not commonly enjoyed by the owners of similar property.**

This applicable to the application in question is the number 1 reason the Commission should no further consider this application. It is no secret who is behind the application if one simply 'googles' the name of the family (Collier Car Club) and how much wealth is enjoyed within the contemplated "billionaires private car dealership" building they are looking to create. I want to make it very clear I am not trying to restrict the Collier family from completing their dealership (museum, club, repair shop, etc.) but if I am trying to purchase a property in Delray Beach that is zoned for a car dealership on 4.8 acres and comes with a 56,000 square foot facility, I am not going to be paying the listed price of

\$8,446,250 (warehouse pricing) I would have to compete against the likes of AutoNation, Greico, Schumacher and Edwards for the property and likely pay more like \$18,400,000.

**2) The new district allows land uses inconsistent with those allowed in the vicinity.**

This is applicable to the application in question fairly clearly and in plain sight when we consider the City is being asked to rezone just ONE parcel. There is no consideration of the vicinity for any other property owners or uses. It is one “spot” being considered for the rezoning request.

**3) The existence of the spot zone conflicts with the policies in the text of the master plan and the future land use map.**

This existence of this spot zone request certainly conflicts with the policies in place in the text of the master plan and the future land use map if we look at what the use truly is: an automobile dealership and repair shop. If the City of Delray Beach truly wishes to limit these uses further down the road, this application and ensuing policy decision as far as precedence will set a standard of how automobile uses are applied for. I.e. A property owner doesn't have the right to open a car dealership on their lot, but another car dealer would pay them a lot of money for the property if they could – so they will want to change the zoning to make that delta in the price to their benefit as they saw it was a successful tactic for the Collier Car Club.

**4) The area is small compared to districts surrounding the parcel in question.**

This is applicable to the application in question again for very clear, simple and factual reasons – we are discussing just one parcel for a “Special Activities District” where all other uses are industrial and office in nature, and therefore will be likely so, moving forward. It is unlikely another Collier Car Club will want to move in next door.

In closing, I wish to offer the applicant the best of luck in convincing the City this Car Club will be a good idea. However, unfortunate for the applicant, I think the ultimate decision is that the Car Club is asked to come back to Delray Beach Development Services once they have located a parcel of property properly zoned for automobile storage and repairs.

Sincerely,

*William Cunningham*

William A. Cunningham III  
777 E. Atlantic Ave, Suite 100  
Delray Beach, FL 33483

cc: Amy Alvarez, Senior Planner  
[alvarez@mydelraybeach.com](mailto:alvarez@mydelraybeach.com)

Exhibit A (attached): “How to spot a spot zoning?” - June 17, 2016 - Author: Brad Neumann.  
Michigan State University Extension

# How to spot a spot zoning

When considering a rezoning, remember four key criteria to avoid creating a spot zone.

June 17, 2016 - Author: [Brad Neumann \(/people/brad\\_neumann\)](/people/brad_neumann), [Michigan State University Extension \(/outreach\)](/outreach)

Planning commissions are occasionally presented with requests to change the current zoning of a parcel or parcels to a different zoning district. Sometimes, it is the planning commission that proposes a rezoning of one or more parcels. A rezoning is an amendment of the zoning map and it requires a specific set of steps to be followed in order to ensure due process (see [For Adoption of a Zoning Ordinance Amendment \(http://www.msue.anr.msu.edu/uploads/resources/pdfs/C17.pdf\)](http://www.msue.anr.msu.edu/uploads/resources/pdfs/C17.pdf)). It is the same process for amending the text of the zoning ordinance.

Rezoning property requires consistency with the community's master plan, according to the [Michigan Planning Enabling Act](http://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-33-of-2008.pdf)

(<http://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-33-of-2008.pdf>). The master plan should include criteria, or guidance for considering zoning amendments. The plan should guide the planning commission as to the appropriate zoning district to rezone a property to, moving towards consistency with the plan. The plan should also guide the planning commission as to when the rezoning is appropriate; for instance, once there are public utilities in place that can serve residential use of a certain density.

The [zoning plan](http://www.msue.anr.msu.edu/news/changes_to_michigan_law_result_in_clearer_underst)

([http://www.msue.anr.msu.edu/news/changes\\_to\\_michigan\\_law\\_result\\_in\\_clearer\\_underst](http://www.msue.anr.msu.edu/news/changes_to_michigan_law_result_in_clearer_underst) portion of the master plan will be key to this review for consistency (also see [All rezonings are not good rezonings](http://www.msue.anr.msu.edu/news/all_rezonings_are_not_good_rezonings)

[http://www.msue.anr.msu.edu/news/all\\_rezonings\\_are\\_not\\_good\\_rezonings](http://www.msue.anr.msu.edu/news/all_rezonings_are_not_good_rezonings)

([http://www.msue.anr.msu.edu/news/all\\_rezonings\\_are\\_not\\_good\\_rezonings](http://www.msue.anr.msu.edu/news/all_rezonings_are_not_good_rezonings))).

One illegal form of rezoning is spot zoning. This practice gets its name from the appearance of small spots of different zoning districts on a zoning map that otherwise has large contiguous areas in the same zoning district around the spots. To be considered a spot zone, the property, in most cases, must meet the following four criteria:

- The area is small compared to districts surrounding the parcel in question.
- The new district allows land uses inconsistent with those allowed in the vicinity.
- The spot zone would confer a special benefit on the individual property owner not commonly enjoyed by the owners of similar property.

- The existence of the spot zone conflicts with the policies in the text of the master plan and the future land use map.

Rezoning that has the four characteristics of spot zoning listed above runs a high risk of invalidation if challenged in court and is not consistent with the master plan. In some cases, master plans anticipate these relationships and provide for them (for example, a small commercial area may serve a residential neighborhood). In those cases where the master plan supports a relatively small zoning district that is dissimilar to the zoning that surrounds it, this is probably not a spot zone.

The most important thing is consistency with the master plan. Remember, the master plan should have been prepared with extensive public engagement and that process is intended to create a consensus vision of future land use and infrastructure – including the future configuration of zoning districts.

To learn more about spot zoning, read the Michigan State University Extension (<http://www.msue.anr.msu.edu/>) Public Policy Brief – Removing Spot Zoning From the Fabric of Zoning Practice (<http://www.msue.anr.msu.edu/uploads/resources/pdfs/S10.pdf>) or contact land use educator ([http://www.msue.anr.msu.edu/program/info/land\\_use\\_education\\_services](http://www.msue.anr.msu.edu/program/info/land_use_education_services)) for assistance.

This article was published by **Michigan State University Extension** (<http://www.msue.msu.edu>). For more information, visit <http://www.msue.msu.edu> (<http://www.msue.msu.edu>). To have a digest of information delivered straight to your email inbox, visit <http://www.msue.msu.edu/newsletters> (<http://www.msue.msu.edu/newsletters>). To contact an expert in your area, visit <http://expert.msue.msu.edu> (<http://expert.msue.msu.edu>), or call 888-MSUE4MI (888-678-3464).

---