SPOTTY BEHAVIOR OR GOOD PRECEDENT: THE REBIRTH OF THE INVERSE SPOT ZONING DOCTRINE IN *RIYA FINNEGAN, LLC V. TOWNSHIP COUNCIL OF SOUTH BRUNSWICK*

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INTRODUCTION

Unless a landowner manages to strike gold or oil on his or her property, the worth of that land "is not in the dirt itself," but in how he or she may develop it.[1] Because the permitted use provides the land with

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[1] Donald R. Daines, *Hanging On to What You Got*, HILL WALLACK LLP,

value, local zoning classifications play a huge part in determining the value of any particular piece of property.[2] Zoning designations are also "the foundation upon which an owner's right to use the property is based."[3] In contrast, the overarching goal of zoning is to advance the common good and general welfare of the entire community, and sometimes the common good is not to permit the most advantageous economic use of land.[4] As a result, the property rights of the individual and the interests of the community often come into conflict during the course of land development.[5]

In balancing these two conflicting interests, courts are no longer likely to accept a mere recitation by a municipality that a zoning ordinance reasonably relates to the police power because it promotes the public health, safety, morals or general welfare.[6] Today, courts are more likely to examine closely the particular purposes behind each zoning action to determine whether it truly achieves those stated purposes.[7] One recent example of this increased judicial scrutiny of municipal zoning action is *Riya Finnegan, LLC v. Township Council of South Brunswick*,[8] in which the New Jersey Supreme Court found that a zoning amendment adopted by the Township was not only arbitrary and capricious, but also impermissible inverse spot zoning.[9] While the dissent criticized the majority's reliance on the judicially created doctrine of inverse spot zoning, others praised the decision for promoting rational and professional zoning and for breathing new life into individual property rights by adding to the arsenal available to landowners looking to defeat a municipality's downzoning of their

http://www.hillwallack.com/web-content/news/articles_040309.html (last visited Apr. 23, 2011).

[2] *See id.*

[3] *Id.*

[4] ZONING AND LAND USE CONTROLS, OBJECTIVES AND PURPOSES OF ZONING AND LAND USE CONTROLS § 34.01(1) (Patrick J. Rohan & Eric Damian Kelly eds., 2009) [hereinafter OBJECTIVES AND PURPOSES] (quoting Louisville & Jefferson Cnty. Planning Comm'n v. Schmidt, 83 S.W.3d 449, 455 (Ky. 2001)).

[5] *See generally* Mark W. Cordes, *Property Rights and Land Use Controls: Balancing Public and Private Interest*, 19 N. ILL. U. L. REV. 629 (1999).

[6] OBJECTIVES AND PURPOSES, *supra* note 4.

[7] *Id.*

[8] Riya Finnegan, LLC v. Twp. Council of S. Brunswick, 197 N.J. 184 (2008).

[9] *Id.* at 187. Inverse spot zoning occurs when a municipality "arbitrarily singles out a particular parcel for different, less favorable treatment than the neighboring ones." Penn Cent. Transp. Co. v. New York City, 438 U.S. 104, 132 (1978).

property.[10]

This Note recognizes that the doctrine of inverse spot zoning was originally developed in response to the problems of zoning's earlier era, and prior to the enactment of New Jersey's Municipal Land Use Law.[11] However, it asserts that the majority in *Riya Finnegan* actually transformed the doctrine in a way that improves New Jersey land use jurisprudence by providing greater clarity and promoting better and more accurate decision-making by the courts. Part I provides a brief description of the inverse spot zoning doctrine and traces its presence in New Jersey case law prior to the *Riya Finnegan* decision. Part II supplies an overview of New Jersey's Municipal Land Use Law and the *Riya Finnegan* decision. Part III examines the historical context of inverse spot zoning and the New Jersey Supreme Court's application of the doctrine in *Riya Finnegan*. Finally, Part IV discusses the important competing interests at stake in a zoning challenge and explains the balance struck by the New Jersey Supreme Court between the broad zoning power granted to municipalities under the Municipal Land Use Law and judicial intervention.

I. WHAT IS INVERSE SPOT ZONING?

This Part explains the features of inverse spot zoning both generally and throughout New Jersey case law. The first subpart not only defines inverse spot zoning, but also compares it to traditional spot zoning and clarifies the meaning of its usage throughout this Note. The second subpart describes and traces its presence in New Jersey case law prior to the *Riya Finnegan* decision.

a. In General

Essentially, spot zoning is the zoning or rezoning of a particular piece of property or "spot" in a manner considerably different from surrounding properties.[12] The term's usage can produce some confusion

[10] *See Riya Finnegan*, 197 N.J. at 204; Daines, *supra* note 1; *see also* Editorial, *Zoning Law and Master Plans*, N.J. L.J., June 26, 2009.

[11] N.J. STAT. ANN. §§ 40:55D-1 to -163 (West 2009). Section 40:55D-62 of New Jersey's Municipal Land Use Law states that the governing body of a municipality "may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate" the Master Plan, provided that there is majority approval and that the body's reasoning for the inconsistency is "set forth in a resolution and recorded in its minutes" upon adoption of the ordinance. *Id.* § 40:55D-62(a).

[12] ZONING AND LAND USE CONTROLS, SPOT ZONING § 38A.01(1) (Patrick J. Rohan &

because courts employ it in two different ways.[13] In the narrower, legal sense, spot zoning is a designation used by courts to condemn a zoning action as per se invalid.[14] However, when courts use the term in the broader, descriptive sense, it simply refers to the practice of rezoning a particular parcel of a land for a purpose that is significantly more or less restrictive than the surrounding zoning.[15] The act of spot zoning is only invalid if a court finds it to be unjustified in light of the totality of the circumstances.[16] Because New Jersey courts hold that zoning is automatically void if found to be spot zoning, this Note will focus on the term in its legal sense.[17]

The typical spot zoning case begins when a municipality complies with a landowner's request to develop his or her land in a manner barred by the current zoning scheme by passing an ordinance rezoning the property.[18] A court will generally invalidate the zoning action as spot zoning if it "is designed to relieve a particular property from applicable zoning restrictions for the benefit of a particular property owner or specially interested party, to the detriment of other owners in the vicinity, and the community as a whole."[19]

Some courts differentiate between inverse or reverse spot zoning and traditional spot zoning.[20] In *Penn Central Transportation Co. v. New York City*,[21] the United States Supreme Court defined inverse spot zoning as "a land-use decision which arbitrarily singles out a particular parcel for different, less favorable treatment than the neighboring ones."[22] Thus, the difference between the two types of spot zoning is that in the classic spot zoning case, a particular lot is singled out for

Eric Damian Kelly eds., 2009) [hereinafter SPOT ZONING].

[13] *See id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *See* Osborne M. Reynolds, Jr., *"Spot Zoning" — A Spot that Could be Removed from the Law*, 48 WASH. U. J. URB. & CONTEMP. L. 117, 121 (1995).

[18] SPOT ZONING, *supra* note 12.

[19] *Id.* (citations omitted)

[20] *See* Borough of Cresskill v. Borough of Dumont, 15 N.J. 238, 250-51 (1954) (invalidating an amendment which in effect granted a variance as "spot zoning"). *Cf.* Seiber v. Laawe, 33 N.J. Super 115, 126 (Super. Ct. Law Div. 1954); Guaclides v. Borough of Englewood Cliffs, 11 N.J. Super 405, 412 (Super. Ct. App. Div. 1951). Both courts indicated that they would hold spot zoning invalid but did not find it in those particular cases because similarly situated property was treated alike.

[21] Penn Cent. Transp. Co. v. New York City, 438 U.S. 104 (1978).

[22] *Id.* at 132.

preferential treatment, while in the case of inverse spot zoning, a particular lot is singled out for zoning that is more restrictive.[23] For example, courts have found impermissible inverse spot zoning where municipalities rezoned a particular parcel from multifamily to single-family residential, commercial to residential, central business to highway commercial, heavy to light industrial, or industrial to residential.[24]

Unlike traditional spot zoning, these types of amendments usually lead to economic disadvantage rather than advantage for the owner of the rezoned property.[25] A court declares a zoning ordinance void as inverse spot zoning when it is "confiscatory or discriminatory to the owners of the subject properties without bearing a substantial relationship to the public health, safety, morals or general welfare."[26] Courts generally uphold a zoning amendment if it furthers the public interest and its benefits to the community outweigh the harm caused to the individual property owner, or if the municipality enacts the amendment as part of a comprehensive zoning plan intended to advance the general welfare and land use uniformity.[27] In other words, a municipal zoning action that discriminates against an individual property owner must serve a police power purpose that outweighs the burden on the individual's property rights or that furthers the community's comprehensive land use plan.

b. New Jersey Case Law

New Jersey case law defines traditional spot zoning as "the use of the zoning power to benefit particular private interests rather than the collective interests of the community."[28] The case law stresses that it is "the antithesis of . . . planned zoning."[29] The case law further states that the test is whether the zoning ordinance at issue was enacted "with the purpose or effect of" advancing a comprehensive zoning scheme or whether it was devised simply to benefit a particular lot through relief

[23] Reynolds, *supra* note 17, at 119.

[24] SPOT ZONING, *supra* note 12 § 38A.06(2).

[25] *Id.*

[26] *Id.* § 38A.06(1).

[27] *Id.* § 38A.06(3).

[28] Riya Finnegan, LLC v. Twp. Council of S. Brunswick, 197 N.J. 184, 195 (2008) (quoting Taxpayers Ass'n of Weymouth Twp. v. Weymouth Twp., 80 N.J. 6, 18 (1976)).

[29] *See* Palisades Props., Inc. v. Brunetti, 44 N.J. 117, 134 (1965).

from a general zoning regulation.[30]

Inverse spot zoning does not appear much throughout New Jersey case law. The New Jersey Supreme Court's most extended discussion of inverse spot zoning took place in 1974 in *Petlin Associates v. Township of Dover*.[31] In that case, a portion of a zoning district permitting retail uses included the plaintiff's property, but after the plaintiff filed plans to build a department store, the municipality altered the zoning.[32] Because the new zoning designation for the plaintiff's property did not allow retail uses, the plaintiff challenged the rezoning.[33] The court held the zoning amendment invalid as inverse spot zoning, emphasizing "that no real consideration was given to how the property would fit into an integrated and comprehensive zone plan" and that the zoning change was contrary to the recommendations of the Township's planning engineer.[34]

Three months later, in *Odabash v. Mayor & Council of Dumont*,[35] the court struck down a zoning amendment proscribing housing construction for the use of more than two families in any zone.[36] As applied to the plaintiff's property, the amendment made the property "an isolated island in the midst of apartment and business uses."[37] Although the Appellate Division characterized the zoning action as inverse spot zoning, the New Jersey Supreme Court, in affirming that part of the decision, simply focused on the amendment's arbitrary and unreasonable nature when applied to the plaintiff's parcel.[38]

Nevertheless, the New Jersey Supreme Court has found some zoning revisions evidently aimed at preventing a proposed development to be permissible. For example, in response to local opposition to a plaintiff's proposed Home Depot store, the municipality in *Manalapan Realty, L.P. v. Township Committee of Manalapan*[39] enacted a zoning amendment that prohibited retail stores "engaged in the sale of lumber or building materials or storing, [from] displaying or selling materials

30 *Id.*
31 Petlin Assocs. V. Twp. of Dover, 64 N.J. 327 (1974).
32 *Id.* at 328-30.
33 *Id.* at 330.
34 *Id.* at 331.
35 Odabash v. Mayor & Council of Dumont, 65 N.J. 115 (1974).
36 *Id.* at 125.
37 *Id.* at 122.
38 *Id.* at 123-25.
39 Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366 (1995).

outside a completely enclosed building" within the zone encompassing plaintiff's property.[40] The Appellate Division held that the amendment was plainly not inverse spot zoning because the amendment affected not just one tract of land, but effectively every zoning district in the township.[41] In order to be inverse spot zoning, the zoning revision would have to inflict "an arbitrary, unique burden on one tract of land."[42] Although the inverse spot zoning issue was not before the New Jersey Supreme Court, the majority declared that the Township's decision to ban the retailing of building materials could further legitimate goals and could not "categorically be adjudged an arbitrary and unreasonable exercise of the zoning power."[43]

II. NEW JERSEY'S MUNICIPAL LAND USE LAW AND RIYA FINNEGAN

This Part provides an overview of New Jersey's Municipal Land Use Law and the New Jersey Supreme Court's decision in *Riya Finnegan*. The first subpart reviews the statutory language pertinent to the *Riya Finnegan* decision, as well as the statute's relevant legislative history. The second subpart provides a summary of the majority and dissenting opinions in *Riya Finnegan*.

a. New Jersey's Municipal Land Use Law

The New Jersey Legislature enacted the Municipal Land Use Law[44] (hereinafter "MLUL") in 1975. The law was designed to be "a comprehensive codification and substantial revision" of the state's several statutes related to municipal land use and building regulation.[45]

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[40] *Id.* at 373 (quoting MANALAPAN, N.J., LAND USE AND DEV. ORDINANCE § 130.94 (1991)).

[41] Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 272 N.J. Super 1, 13-14 (Super. Ct. App. Div. 1994).

[42] *Id.* at 14.

[43] *Manalapan Realty*, 140 N.J. at 385-86 (1995) (quoting Zilinsky v. Zoning Bd. of Adjustment, 105 N.J. 363, 371 (1987)).

[44] N.J. STAT. ANN. §§ 40:55D-1 to -163 (West 2009).

[45] *S. County and Municipal Government Comm.: Statement to S. No. 3054*, 1975 Leg., 2nd Sess. 1 (N.J. 1975) [hereinafter *Statement to S. No. 3054*]; *see also Public Hearing on S. No. 3054 Before the S. County and Municipal Government Comm.*, 1975 Leg., 2nd Sess. 2 (N.J. 1975) [hereinafter *Public Hearing*] (statement of Sen. Martin L. Greenberg, Member, S. County and Municipal Government Comm.) (noting S. No. 3054 codified five basic land use statutes enacted at different times: Planning Acts, Zoning Enabling Acts, Official Map and Building Act, Plan Unit Development Act, and the Regional Planning Act).

A former president of the New Jersey State League of Municipalities, the entity that drafted the legislation, emphasized that New Jersey had not yet updated the enabling act it passed in 1928, and that numerous changes had occurred in land use since that time.[46] He also stressed that the legislation's drafters, in carefully examining all land use case law since 1928, hoped to correct many of the pitfalls that led to disputes faced by municipalities and courts prior to the law's enactment.[47]

Another speaker at the public hearing highlighted that, at that time, a variety of municipal land use ordinances and actions were under legal attack.[48] He also emphasized that, although the MLUL "would not eliminate all such litigation, the bill is structured to minimize the potential for such litigation" and to provide guidance to municipal officials and their consultants.[49] One of the principal standards that would be effectuated by the MLUL was the need for stricter conformity between zoning ordinances and the Master Plan.[50]

Section 62(a) of the MLUL grants the governing body of each municipality the power to zone.[51] It states that "after the planning board has adopted . . . a [M]aster [P]lan," a municipality's governing body "may adopt or amend a zoning ordinance."[52] In essence, Section 62(a) presents municipalities with two options in enacting or amending a zoning ordinance. Under the first option, all provisions of any zoning ordinance, amendment, or revision must be "substantially consistent with . . . the [M]aster [P]lan or designed to effectuate" the elements of the plan.[53]

The statute's second option declares that "the governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate" the elements of the Master Plan, "but only by affirmative vote of a majority

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[46] *Public Hearing*, *supra* note 45, at 3 (statement of George Hagermeister, Chairman, N.J. State League of Municipalities' Land Use Study Comm.).

[47] *Id.* at 4.

[48] *Id.* at 9 (statement of Stewart M. Hutt, Gen. Counsel, N.J. Builders Ass'n.).

[49] *Id.* at 9-10.

[50] *Statement to S. No. 3054*, *supra* note 45, at 5.

[51] N.J. STAT. ANN. § 40:55D-62(a) (West 2009).

[52] *Id.* The MLUL also effectively grants zoning boards the power to rezone a parcel by granting a use variance. *See id.* § 40:55D-70. "A use variance allows a landowner to use property in a manner inconsistent with permitted uses in the zone in question, such as allowing a commercial establishment to locate in a residential zone." ZONING AND LAND USE CONTROLS, VARIANCES § 43.01(3)(a) (Patrick J. Rohan & Eric Damian Kelly eds., 2009).

[53] N.J. STAT. ANN. § 40:55D-62(a).

of the full authorized membership of the governing body . . . ."[54] In addition, the governing body must "set forth in a resolution and record[ ] in its minutes when adopting such a zoning ordinance" its reasons for deviating from the Master Plan.[55] Section 89 obligates municipalities to reexamine and update their Master Plans at least every six years in order to keep their zoning current.[56]

b. Riya Finnegan, LLC v. Township Council of South Brunswick

The plaintiff in *Riya Finnegan, LLC v. Township Council of South Brunswick*[57] owned a sizeable piece of land located in South Brunswick, New Jersey along a commercial highway.[58] According to South Brunswick's Master Plan, adopted in 2001 after a two-year study of land uses and traffic, the plaintiff's parcel was zoned as Neighborhood Commercial.[59] The Neighborhood Commercial or C-1 Zone, which also encompasses much of the land along the same highway as the plaintiff's property, includes retail service businesses, professional offices, and multi-story mixed-use developments.[60] Unlike the plaintiff's land, most of the other parcels in this zone were already developed with "retail service businesses and professional offices, including multi-story mixed-use development."[61]

In 2003, the plaintiff submitted a site plan application to the Planning Board showing plans to build "one professional and two retail buildings, one of which was to be a drugstore."[62] Although the plaintiff fully complied with the district's zoning requirements, neighboring residents objected to the plan.[63] They petitioned the Township Council to rezone the plaintiff's parcel as Office Professional, another type of zone only found in one distinct part of town.[64] The troubled residents highlighted that the area surrounding the plaintiff's lot was quite developed and that allowing the plaintiff to go forward with its plan

54 *Id.*
55 *Id.*
56 *Id.* § 40:55D-89.
57 Riya Finnegan, LLC v. Twp. Council of South Brunswick, 197 N.J. 184 (2008).
58 *Id.* at 187.
59 *Id.* at 187-88.
60 *Id.* at 188.
61 *Id.*
62 *Id.*
63 *Riya Finnegan*, 197 N.J. at 188.
64 *Id.*

would lead only to "additional traffic, noise, odor, dust, and pollution."[65] The Council then forwarded the issue to the Planning Board for consideration.[66]

Following a public hearing in which representatives of the disgruntled residents voiced their objections to the site plan, the Planning Board advised the Township Council to rezone the plaintiff's parcel.[67] After the Council heard from both the neighboring property owners and the plaintiff's representative, it ultimately adopted an ordinance rezoning the plaintiff's land as Office Professional.[68] In an accompanying resolution, the Council declared that although the rezoning of the parcel was "inconsistent with the Master Plan, . . . it [would] significantly protect the health, safety and welfare of the residents and motorists in the area."[69]

More specifically, the resolution stated that the rezoning would not only "prevent an intensification of traffic congestion at the intersection" where the plaintiff's property is situated, but also thwart an increase in the volume of vehicles through a neighboring residential development and near an elementary school and park.[70] The resolution also stressed that existing development in the area in line with the C-1 Zone already resulted in an abundance of retail and commercial establishments similar to those proposed by the plaintiff.[71] It further highlighted that the rezoning would be proper because professional offices produce little noise, light, or odor, and tend to be open for more limited hours than businesses, thus tending to generate less traffic.[72] The resolution lastly maintained that offices function well as a transition "between commercial and residential [uses] because of [their] intermediate intensity."[73]

After the rezoning, the plaintiff filed a complaint claiming that the zoning amendment "was inconsistent with the Master Plan, was arbitrary and capricious, and constituted impermissible inverse spot

65 *Id.*
66 *Id.* at 189.
67 *Id.*
68 *Id.*
69 *Riya Finnegan*, 197 N.J. at 189.
70 *Id.*
71 *Id.*
72 *Id.*
73 *Id.*

zoning."[74] The trial court found that the Township complied with the "technical requirements" of Section 62(a) of the MLUL, but invalidated the zoning amendment because it found the ordinance to be arbitrary and capricious.[75] The trial court alternatively held that the zoning amendment constituted impermissible inverse spot zoning since the Township solely rezoned the plaintiff's property and there was nothing indicating that the revision would advance a comprehensive zoning plan.[76]

The Appellate Division, after applying a different standard of review,[77] held that the ordinance was not arbitrary or capricious, and that the resolution accompanying the rezoning decision sufficiently conformed to the MLUL by providing the Council's reasoning for rezoning the property inconsistently with the Master Plan.[78] The panel also rejected the trial court's inverse spot zoning decision by distinguishing the case law on which that court relied and finding that the parcel's large size warranted the dissimilar treatment.[79] The New Jersey Supreme Court then granted certification to review the case.[80]

In a majority opinion written by Justice Hoens, the court first noted that the governing body clearly complied with the technical requirements of the MLUL by forwarding the issue to the planning board for its consideration and setting forth in a resolution a series of reasons for why it passed the ordinance.[81] The court then proceeded to

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[74] *Id.* at 189-90.

[75] *Riya Finnegan*, 197 N.J. at 190.

[76] *Id.*

[77] In holding that it is insufficient for a municipality to base a decision to rezone solely on the protestations of neighboring property owners, the trial court cited *Cell South of New Jersey, Inc. v. Zoning Board of Adjustment of West Windsor*, 172 N.J. 75 (2001). Riya Finnegan, LLC v. Twp. Council of S. Brunswick, 394 N.J. Super 303, 313 (Super. Ct. App. Div. 2007). The Appellate Division distinguished this decision by emphasizing that the Board of Adjustment in *Cell South* was deciding whether to grant an application for a variance. *Id.* It characterized this as a "quasi-judicial, adjudicative function" obligating the Board "to create a record that supported a decision to deviate from established municipal policy." *Id.* at 314-15. In contrast, the Council in *Riya Finnegan* was performing a "purely legislative function," which allowed it, "as a duly elected policymaking body, to rely on the sentiments of its constituency to formulate municipal policy, including zoning regulations." *Id.* at 314 (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 272 N.J. Super 1, 12 (Super. Ct. App. Div. 1994), *aff'd*, 140 N.J. 366 (1995)).

[78] *Riya Finnegan*, 197 N.J. at 190.

[79] *Id.* at 190-91.

[80] *Id.* at 191.

[81] *Id.* at 192.

emphasize that the Township needed to look further in order to "protect[] the rights of the few when the voices of the many speak more loudly."[82] The court agreed with the trial court that the Township's rezoning of plaintiff's property was "arbitrary, capricious and unreasonable."[83] The majority also noted that "[a]lthough the MLUL does not define either spot zoning or inverse spot zoning, both concepts are imbedded in the principles of sound and comprehensive planning that pervade that statutory frameworkFalse"[84] The court did not think the post-*Petlin* adoption of the MLUL implied it must reach a different result.[85]

In agreeing with the trial court that the Township's zoning amendment was inverse spot zoning, the court found that a combination of multiple factors made this case an instance of inverse spot zoning.[86] In essence, the court underscored that the zoning change made the plaintiff's property difficult to develop, that the plaintiff could no longer implement a site plan that was wholly in accord with the original zoning designation, that the change was driven by neighboring property owners, and that the new zoning designation was not created for that part of town and did not further a comprehensive plan.[87] The court further noted that the Township took action without the advice of expert planners or consultants.[88]

Nevertheless, the court maintained it was not implying that it is never proper to revise the zoning for what is essentially "the last undeveloped parcel in a town or in a discrete geographic area of a municipality."[89] The majority asserted that a municipality could revise the zoning during a reexamination of the Master Plan or through the MLUL's inconsistency option.[90] According to the majority, the MLUL's requirement that the governing body articulate the reasoning behind its departure from its Master Plan "serves to prevent the municipality from acting in an arbitrary or capricious fashion."[91]

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82 *Id.* at 192-93.
83 *See id.* at 195.
84 *Riya Finnegan*, 197 N.J. at 197.
85 *See* discussion of *Petlin*, *supra* Part I(b).
86 *Riya Finnegan*, 197 N.J. at 197.
87 *Id.*
88 *Id.*
89 *Id.* at 197-98.
90 *Id.* at 198.
91 *Id.*

In a dissent joined by Justice Long, Justice Albin accused the court of "substitut[ing] its own 'equitable' judgment for a lawfully-enacted zoning ordinance addressing public safety and quality-of-life issues of concern to South Brunswick's residents."[92] Justice Albin argued that the MLUL exhibits the Legislature's policy of providing municipalities with the necessary "breathing space" to fine-tune their zoning in the face of "changing circumstances."[93] The dissent asserted that the language allowing amendments inconsistent with the Master Plan reflects a recognition that zoning may be imperfect or need to "evolve to meet a community's changing conditions and needs," and that a Master Plan should not be "a straitjacket that forbids a municipality from improving its laws."[94] He also stressed that the Legislature vested the democratically elected governing bodies of municipalities with the zoning power and only required that use of that power comply with the terms of the statute.[95]

Justice Albin additionally contended that the court should not have invoked the doctrine of inverse spot zoning here because the instant case differs from *Petlin* in two noteworthy ways.[96] The dissent first noted that *Petlin* was decided seventeen months before the existence of the MLUL.[97] Because the predecessor to the MLUL did not expressly allow a municipality to enact a zoning amendment "*inconsistent* with a [M]aster [P]lan," Justice Albin asserted that the *Petlin* decision may have limited value in deciding more recent cases.[98]

Secondly, the dissent argued that *Petlin's* facts were not similar to the case at hand.[99] In *Petlin*, the court found the municipality's actions to be inverse spot zoning because it gave no real consideration to the property's place in the town's comprehensive zoning plan and the municipality simply designed the zoning changes to alter the use of plaintiff's land.[100] Here, South Brunswick took the time to determine whether the zoning revision would further the Township's comprehensive development, as well as the health, safety and welfare of

92 *Riya Finnegan*, 197 N.J. at 200 (Albin, J., dissenting).
93 *Id.*
94 *Id.* at 201.
95 *Id.*
96 *Id.* at 205 (Albin, J., dissenting).
97 *Id.*
98 *Riya Finnegan*, 197 N.J. at 205 (Albin, J., dissenting).
99 *Id.*
100 *Id.* (quoting Petlin Assocs. v. Twp. of Dover, 64 N.J. 327, 331 (1974)).

its inhabitants.[101]

Additionally, the court in *Petlin* considered the rezoning questionable on its face because the Township completely disregarded the opinion of its own planning engineer.[102] The dissent highlighted that South Brunswick's Director of Planning and Community Development, on the other hand, opined that the amendment would "clearly lead to enhanced protection of the health, safety and welfare of [area] residents."[103] Furthermore, the South Brunswick governing body was plainly responding to the potentially harmful impact of the original zoning designation on the nearby residential development.[104]

Justice Albin further questioned the "source of authority" for the inverse spot zoning doctrine and averred that judicially created doctrines that are equitable in nature "must give way to statutory law."[105] Lastly, the dissent asserted that because a court cannot override the Legislature's grant of authority to municipalities based merely on its own conception of fairness, the MLUL allows a zoning change that is inconsistent with the Master Plan to stand so long as it is rationally-based.[106]

III. RIYA FINNEGAN'S TRANSFORMATION OF THE INVERSE SPOT ZONING DOCTRINE

This Part examines the historical context of inverse spot zoning and the New Jersey Supreme Court's application of the doctrine in *Riya Finnegan*. The first subpart finds that despite the fact that the inverse spot zoning doctrine developed in response to the zoning practices of an earlier era, the doctrine can still be relevant in determining whether a zoning action was arbitrary or capricious. The second subpart further concludes that the court's revitalization of the inverse spot zoning doctrine breathes greater life into New Jersey land use jurisprudence by providing courts with more guidance.

a. The Historical Context of Inverse Spot Zoning

Spot zoning doctrine principally evolved during the early era of

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101 *Id.*

102 *Id.* (quoting Petlin Assocs. v. Twp. of Dover, 64 N.J. 327, 331 (1974)).

103 *Id.*

104 *Riya Finegan*, 197 N.J. at 205-06.

105 *Id.* at 206.

106 *Id.*

zoning regulation when municipal governments began facing challenges to ad hoc zoning practices that resulted from the states' original zoning statutes.[107] One problem with the states' early zoning legislation arose from the Standard State Zoning Enabling Act itself.[108] Although the Standard State Zoning Enabling Act, which states began enacting in the 1920s, commanded that zoning be "consistent with a comprehensive plan," the Act failed to explain both the meaning of that phrase and the term "consistent."[109] Additionally, there were few professional planners during the 1920s and 1930s, and a relatively small number of genuinely comprehensive plans, so that early decisions defined the term "comprehensive plan" quite loosely.[110] Because it was fairly simple for a municipality to prove that its zoning was in accordance with a comprehensive plan, it was also easy for local governments to begin abusing the zoning power through spot zoning.[111]

Another problem with early zoning legislation stemmed from the lack of a clearly defined relationship between the Standard State Zoning Enabling Act and the Standard City Planning Enabling Act.[112] As noted above, the Standard State Zoning Enabling Act required that zoning actions be "in accordance with a comprehensive plan."[113] The Standard City Planning Enabling Act, on the other hand, required the creation of a local planning commission whose duty it was to create a Master Plan.[114] These two distinct model laws, however, did not equate the

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[107] ZONING AND LAND USE CONTROLS, THE COMPREHENSIVE OR MASTER PLAN § 37.03(2) (Patrick J. Rohan & Eric Damian Kelly eds., 2009) [hereinafter MASTER PLAN].

[108] *See id*.

[109] *Id.* § 37.03(1); *see also* 1 JOSEPH F. DIMENTO, RATHKOPF'S THE LAW OF ZONING AND PLANNING, COMPREHENSIVE PLAN REQUIREMENTS AND THE CONSISTENCY DOCTRINE § 14:2 (4th ed. 2010) (noting that courts have construed the requirement of a comprehensive plan "in several different ways.").

[110] 1 PATRICIA E. SALKIN & KENNETH H. YOUNG, AMERICAN LAW OF ZONING, PUBLIC CONTROL OF PRIVATE LAND § 1:11 (5th ed. 2009) [hereinafter PUBLIC CONTROL]; MASTER PLAN, *supra* note 107, § 37.03(1); *see also* 1 PATRICIA E. SALKIN & KENNETH H. YOUNG, AMERICAN LAW OF ZONING, LIMITATIONS UPON THE SUBSTANCE OF ZONING ORDINANCES § 6:3 (5th ed. 2009) [hereinafter LIMITATIONS] ("As few of these communities had adopted or prepared anything resembling a written plan for development, it is not surprising that the courts did not construe the requirement of a comprehensive plan as one requiring a master plan formally prepared or adopted.").

[111] MASTER PLAN, *supra* note 107 § 37.03(1).

[112] *Id.* § 37.03(2).

[113] *Id.* (quoting DEP'T OF COMMERCE, STANDARD STATE ZONING ENABLING ACT § 3); *see also* Charles M. Haar, *In Accordance with a Comprehensive Plan*, 68 HARV. L. REV. 1154, 1155 (1955).

[114] MASTER PLAN, *supra* note 107 § 37.03(2); s*ee also* Haar, *supra* note 113, at 1155.

phrase "comprehensive plan" with the term "Master Plan."[115] Furthermore, the original version of the Standard State Zoning Enabling Act predated the Standard City Planning Enabling Act by six years.[116] As a result, most local governments adopted zoning ordinances without first preparing a comprehensive plan for community development.[117]

Adding to the confusion, many courts construed the term "comprehensive plan" as simply referring to a set of zoning ordinances themselves.[118] Therefore, the zoning task preceded and dominated the planning task so that zoning ordinances became the planning, instead of serving as a short-term implementation device for a comprehensive long-term land use plan.[119] Moreover, municipalities viewed the Master Plan as merely advisory and without any legal effect, so that "consistency and the policy of promoting structured, well organized development in light of . . . affirmative community goals" was not furthered.[120] Without clear recognition of the need for development according to a comprehensive plan, the risk that zoning would tyrannize individual landowners increased drastically.[121]

In the 1960s, the desire to eliminate ad hoc zoning and the "arbitrary and discriminatory" measures it produced increased as municipal governments confronted numerous challenges to zoning actions brought by local property owners.[122] Many of these complaints alleged that a zoning ordinance or revision constituted impermissible spot zoning.[123] By the 1970s, however, the era of contemporary land use controls began to develop.[124] This new era evolved not only from the

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[115] MASTER PLAN, *supra* note 107.

[116] 1 PATRICIA E. SALKIN & KENNETH H. YOUNG, AMERICAN LAW OF ZONING, MUNICIPAL PLANNING AND THE COMPREHENSIVE PLAN § 5:1 (5th ed. 2009) [hereinafter MUNICIPAL PLANNING].

[117] MASTER PLAN, *supra* note 107; *see also* PUBLIC CONTROL, *supra* note 110, § 1:18 (observing that "communities are quick to adopt zoning ordinances, but less anxious to develop a plan").

[118] MASTER PLAN, *supra* note 107; *see also* PUBLIC CONTROL, *supra* note 111 § 1:18 ("The courts have generally assumed the existence of a plan, or have detected the essence of a plan in the zoning ordinance itself.").

[119] MASTER PLAN, *supra* note 107.

[120] *Id.*

[121] Haar, *supra* note 113, at 1158.

[122] MASTER PLAN, *supra* note 107.

[123] *Id.*

[124] *Id.* § 37.03(3)(a); *see also* 1 EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING, BACKGROUND OF POLICE POWER AND ZONING REGULATION § 1:13 (4th ed. 2010) (noting that numerous states amended their zoning enabling acts during the

concerns of the 1960s, but also in response to the improved sophistication of the planning profession.[125] In addition, environmental issues of the late 1960s and early 1970s led states to establish pollution control programs that eventually developed into state-controlled land use programs.[126]

During the 1970s and 1980s, the state's role in land use development continued to increase along with statutory, administrative, and judicial consideration of the requirement that land use controls be consistent with a comprehensive plan.[127] Today, most municipalities have both a professional planner and a Master Plan embodying the comprehensive plan of the community, or have at least had one in the past.[128] Thus, there is now a greater expectation that municipalities take the time to develop a comprehensive plan for their communities and then adhere to that plan in making zoning decisions.[129]

In New Jersey, the official beginning of contemporary zoning practices took place after the Legislature enacted the MLUL in 1975.[130] The legislative history of the MLUL illustrates that, prior to its enactment, New Jersey had yet to update the zoning enabling legislation passed in 1928.[131] The drafters developed the law in response to the numerous challenges to municipal zoning actions faced by local governments.[132] In requiring stricter conformity between zoning actions and the Master Plan, as well as clarifying other procedural aspects of land use regulation,[133] one of the legislation's main goals was to minimize the potential for legal challenges to local zoning actions, such as those alleging impermissible spot zoning.[134] Nevertheless, the MLUL

1970s).

[125] MASTER PLAN, *supra* note 107.

[126] *Id.*; *see also* ZIEGLER, *supra* note 124 (noting that zoning efforts intensified during 1960s and 1970s to address new concerns and that various state-administered land use programs resulted "on the basis that local land regulation was inadequate to manage growth and achieve environmental objectives.").

[127] MUNICIPAL PLANNING, *supra* note 116; MASTER PLAN, *supra* note 107.

[128] MASTER PLAN, *supra* note 107 § 37.03(1).

[129] *Id.*

[130] *See* discussion of the MLUL, *supra* Part II(a).

[131] *See Public Hearing*, *supra* note 45, at 3 (statement of George Hagermeister, Chairman, N.J. State League of Municipalities' Land Use Study Comm.).

[132] *Id.*

[133] *Statement to S. No. 3054*, *supra* note 45, at 5.

[134] *Public Hearing*, *supra* note 45, at 9-10 (N.J. 1975) (statement of Stewart M. Hutt, Gen. Counsel, N.J. Builders Ass'n).

itself never mentions spot zoning or inverse spot zoning.[135] Furthermore, *Petlin*, the New Jersey Supreme Court's most extended discussion of inverse spot zoning, was actually decided approximately seventeen months before the MLUL went into effect.[136]

Nonetheless, although that law eliminated some of the misunderstandings about zoning that gave rise to the creation of the spot zoning doctrine, the majority in *Riya Finnegan* focused on the way in which inverse spot zoning doctrine is entrenched in "the principles of sound and comprehensive planning" that pervade the MLUL.[137] The court also stressed that the doctrine emphasizes the arbitrariness of the municipal decision rather than whether the municipality singled out a particular parcel for beneficial or detrimental treatment.[138] In other words, the court affirmed that the issue of inverse spot zoning is still relevant to whether a municipal decision was arbitrary, capricious, or unreasonable despite the passage of the MLUL.

b. Interaction with the Arbitrary, Capricious, or Unreasonable Standard

More recently, courts have moved away from applying the inverse spot zoning doctrine to zoning challenges and instead solely consider whether a zoning action is arbitrary, capricious, or unreasonable.[139] For example, the New Jersey Supreme Court, in *Riggs v. Township of Long Beach*, never mentioned the phrase "inverse spot zoning" when it concluded that an amendment "whose sole purpose . . . was to devalue the property in order to facilitate eminent domain" was unlawful.[140] Furthermore, many characterize the term "inverse spot zoning" as more of an epithet than a judicial doctrine, and at least one scholar argues it is a "black spot" on the law in need of removal.[141] Critics believe the doctrine is unnecessary because courts must invalidate arbitrary or discriminatory zoning decisions regardless of whether the plaintiff

135 *See* Riya Finnegan, LLC v. Twp. Council of S. Brunswick, 197 N.J. 184, 197 (2008).

136 *See* discussion *supra* Part I(b); *see also Riya Finnegan*, 197 N.J. at 205 (Albin, J., dissenting).

137 *See Riya Finnegan*, 197 N.J. at 197.

138 *Id.*

139 *See* Reynolds, *supra* note 17, at 135-36.

140 36 DAVID J. FRIZELL, N.J. PRACTICE, LAND USE LAW § 3.11.1 (3d ed. Supp. 2008) (citing Riggs v. Twp. of Long Beach, 109 N.J. 601, 612-13 (1988)).

141 *See id.*; Reynolds, *supra* note 17, at 137.

characterizes the action as inverse spot zoning.[142]

However, the majority in *Riya Finnegan* clarified the doctrine by concentrating on the arbitrariness of the governing body's zoning decision in making its inverse spot zoning determination, essentially treating it as a derivative of the arbitrary or capricious standard.[143] Invocation of the doctrine, as characterized by the court in *Riya Finnegan*, may actually help courts more accurately determine whether a downzoning was an arbitrary or capricious exercise of the zoning power. In explaining why the Township's actions constituted impermissible inverse spot zoning, the Court cited several factors, which now provide courts with additional guidance to determine whether a rezoning is arbitrary and thus invalid.[144] These five factors were the fact that the zoning change made the plaintiff's property difficult to develop, that the plaintiff could no longer implement a site plan that was wholly in accord with the original zoning designation, that the change was driven by neighboring property owners, that the new zoning designation was not created for that part of town and did not further a comprehensive plan, and that the Township took action without the advice of expert planners or consultants.[145]

The fact that the municipality downgraded the zoning of the plaintiff's parcel and that neighboring property owners were the driving force behind this rezoning suggested that majority interests impermissibly dominated individual property rights.[146] The presence of these facts alone does not automatically lead to the conclusion that the amendment was arbitrary, but the existence of the other three factors heightens the inference of arbitrariness. For example, the municipality's failure to consult with an expert planner before making a decision further implied that it was merely adhering to the neighbors' wishes rather than making an informed judgment about the needs of the community.[147]

In addition, the plaintiff's site plan was completely in accord with the previous zoning ordinance the municipality had enacted as per its Master Plan, while the new zoning did not further any sort of

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142 *See* Reynolds, *supra* note 17, at 134.

143 *See Riya Finnegan*, 197 N.J. at 197.

144 *See* discussion *supra* Part II(b).

145 *Riya Finnegan*, 197 N.J. at 197.

146 *Id.*

147 *See id.*

comprehensive plan.[148] Therefore, the municipality's failure to advance a comprehensive plan through the zoning amendment also suggested that the rezoning was improper. Furthermore, although the MLUL allows a municipality to pass a zoning ordinance that is inconsistent with its Master Plan, the presence of the other factors suggests that the decision to rezone inconsistently was impermissible. In short, these factors provide courts with a greater understanding of when downzoning is arbitrary, capricious, or unreasonable.

IV. INVERSE SPOT ZONING DOCTRINE PROMOTES MORE ACCURACY IN JUDICIAL DECISION-MAKING

This Part discusses the important competing interests at stake in a zoning challenge and explains the equilibrium struck by the New Jersey Supreme Court between the broad zoning power granted to municipalities under the MLUL and judicial intervention. The first subpart explains the importance of courts striking a proper balance in protecting both individual property rights and the public interest when deciding a zoning dispute. The second subpart underscores the way in which the *Riya Finnegan* decision achieves this proper balance.

a. The Competing Interests in Land Use Jurisprudence

The most fundamental competing interests in the field of land use controls are "the rights of private property owners and the rights of the more general public."[149] In *Riya Finnegan*, the court notes that many zoning and land use issues deal with "balancing vested property rights, protected by the takings clause, against the larger concerns for the general good and welfare of the public as expressed through their elected and appointed officials."[150]

On the one hand, protection of individual property interests serves important functions in society.[151] According to the United States Supreme Court in *Carey v. Brown*,[152] "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society."[153] Aside from promoting

148 *See id*.
149 Cordes, *supra* note 5, at 629.
150 *Riya Finnegan*, 197 N.J. at 198.
151 Cordes, *supra* note 5, at 638.
152 Carey v. Brown, 447 U.S. 455 (1980).
153 *Id.* at 471.

personal autonomy and privacy, sufficient individual property rights are also necessary to protect real estate investments so that land development is not excessively chilled or discouraged.[154] This is because land development can lead to valuable resources, such as housing and commercial uses, which, in turn, lead to jobs, goods, and services.[155]

On the other hand, broader social and public interests have always limited individual property rights.[156] Nuisance principles, which courts have used to check individual property rights since the early common law, hold that "a landowner cannot use property in such a way as to harm the property rights of another."[157] This is so because the effects of property use unavoidably outstretch property lines and frequently clash with other nearby property uses, thereby requiring a reasonable accommodation of interests.[158] In fact, restrictions on property rights, such as zoning, actually enhance the property interests of many individuals because "[t]o the extent a property owner values the protection from conflicting uses more than the loss of development opportunities, there is a sum gain."[159] The United States Supreme Court has noted this in its references to the principle of reciprocity, "which in part recognizes that regulations often have reciprocal burdens and benefits."[160]

Both the competing interests of promoting the general welfare through property restrictions and protecting individual property rights serve significant societal functions. Thus, it is particularly important that cases challenging municipal zoning actions be decided competently, so that courts do not improperly subordinate either individual property rights or the public interest. The New Jersey Supreme Court's discussion of inverse spot zoning in *Riya Finnegan* furthers this goal by providing courts with greater clarity with respect to deciding whether a municipal zoning action arbitrarily imposes a burden on a property owner.[161]

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154 Cordes, *supra* note 5, at 640.

155 *Id.*

156 *Id.*

157 *Id.*; PUBLIC CONTROL, *supra* note 110, § 1:2.

158 Cordes, *supra* note 5, at 640.

159 *Id.* at 645-46.

160 *Id.* at 646.

161 *See* Riya Finnegan, LLC v. Twp. Council of S. Brunswick, 197 N.J. 184, 198-99 (2008).

b. Balancing Local Zoning Authority and Judicial Safeguards

A Master Plan is the result of extensive and carefully executed background studies of a community, which means that any zoning action inconsistent with that plan may be "inconsistent with the community's own judgment about its future."[162] However, the objective of zoning and the Master Plan "is not to place the municipality in a zoned strait-jacket, but rather to give direction and control to the course of its development."[163] As noted earlier, the MLUL requires municipalities to reexamine and update their Master Plans at least every six years.[164] However, this may not necessarily provide municipalities with the needed flexibility. Therefore, it may be necessary and beneficial for a municipality to exercise its zoning power to amend a zoning ordinance in order to achieve the community's long-term goals.[165]

The New Jersey Legislature, through the MLUL, thus recognizes the importance of some flexibility in zoning.[166] Unlike the traditional approach to zoning, the New Jersey approach acknowledges that circumstances can change by allowing local governments, for good cause, to act inconsistently with their Master Plan.[167] Nevertheless, "the line between flexibility and arbitrariness is a narrow one."[168] For that reason, the MLUL also safeguards against arbitrariness by requiring that a municipality attach a resolution setting forth its reasoning for any inconsistency with the Master Plan.[169] This requirement should make it clear to a court that a revision is not arbitrary or capricious, but rather "represents considered legislative judgment."[170]

Nonetheless, the *Riya Finnegan* decision makes it evident that a municipality's zoning decision may still be invalid, even if the municipality complied with the technical requirements of the MLUL in passing a zoning ordinance inconsistent with its own Master Plan.[171] The

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[162] MASTER PLAN, *supra* note 107 § 37.03(3)(ff).

[163] Note, *"Spot Zoning" — A Vicious Practice or a Community Benefit*, 29 FORDHAM L. REV. 740, 748 (1961).

[164] *See* discussion *supra* Part II(a).

[165] *See* Note, *supra* note 163.

[166] *See* N.J. STAT. ANN. § 40:55D-62(a) (West 2009).

[167] MASTER PLAN, *supra* note 107 § 37.03(3)(q).

[168] Haar, *supra* note 113, at 1169.

[169] MASTER PLAN, *supra* note 107 § 37.03(3)(y).

[170] *See id.* § 37.03(3)(ff).

[171] *See* Riya Finnegan, LLC v. Twp. Council of S. Brunswick, 197 N.J. 184, 192-93

decision further confirms that a municipality cannot simply cite generic concerns without any support as to the basis for a zoning amendment, and that the courts will invalidate a zoning action as arbitrary or capricious if "the reasons expressed by the governing body for its decision to rezone [a] parcel fall short."[172]

Ostensibly, Section 62(a) of the MLUL grants each municipality broad zoning power because local governing bodies are in the best position to analyze their community's land use situation and to fine-tune their Master Plan by making any necessary adjustments. Of course, it is also true that there may be valid reasons for mistrusting municipal zoning amendments. Despite the existence of New Jersey's Open Public Meetings Act,[173] some still believe that zoning decisions "are frequently made behind closed doors and only opened to the public after a majority of the governing body has already 'informally' agreed to approve the zone change," leaving individual property owners with little influence at public hearings.[174] Consequently, judicial intervention may be necessary to protect individual property interests.

Because judicial intervention encourages courts to second-guess local officials and substitute their own judgment for local zoning decisions, it is also important that courts not have undue power to overturn municipal zoning enactments. By providing a gloss on the arbitrary or capricious standard and by giving New Jersey courts more guidance, the majority's use of the inverse spot zoning doctrine in *Riya Finnegan* to overturn a local zoning amendment promotes better decision-making by courts in land use decisions. Therefore advances the policy of striking a proper balance between individual property rights and the public interest.

However, had recent legislation existed in New Jersey prior to the *Riya Finnegan* decision, the court would not have even heard the case. Under the current "Time of Decision Rule," "a planning board or

(2008).

[172] *See id.* at 193.

[173] N.J. STAT. ANN. § 10:4-6 to -21 (West 2009). Under the Act, also known as "The Sunshine Law," "no public body shall hold a meeting unless adequate notice thereof has been provided to the public." *Id.* § 10:4-9. The term "public body" means a group of two or more persons, "empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person, or collectively authorized to spend public funds including the Legislature." *Id.* § 10:4-8. The Act's requirements do not apply to the judicial branch, juries, the Parole Board, the State Commission of Investigation or any political party. *Id.*

[174] *See* Daines, *supra* note 1.

zoning board of adjustment applies the law in effect at the time it renders its decision rather than the law in effect when the issues were initially presented."[175] Thus, a governing body can revise its zoning ordinance in direct response to an application for development and resolve the matter under the amended ordinance.[176]

On May 5, 2010, New Jersey Governor Chris Christie signed a bill into law that would effectively prevent a municipality from amending its zoning laws in response to an application.[177] Under the new law, which is to take effect within one year of enactment, a board must decide an application for development in accordance with the land use regulations that were in effect when the landowner submitted his or her application.[178] Because of this law's enactment, inverse spot zoning cases, like *Riya Finnegan*, are unlikely to arise in the future. Thus, the victory for land use jurisprudence found in *Riya Finnegan* may have come too late for New Jersey courts.

V. CONCLUSION

Although the MLUL has since eradicated the misunderstandings about zoning that led to the development of the inverse spot zoning doctrine, the *Riya Finnegan* decision shows that the doctrine can still be relevant to determining whether a municipal zoning action was arbitrary or capricious. Zoning requires a delicate balancing of individual rights against the welfare of the community as a whole. However, it can be difficult to determine whether a zoning revision arbitrarily burdens one of these two conflicting interests. By providing courts with additional guidance for determining when a municipal zoning amendment is arbitrary or capricious, the New Jersey Supreme Court's revitalization of the inverse spot zoning doctrine promotes better decision-making by New Jersey courts faced with zoning challenges.

Because zoning requires a difficult balancing of important

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[175] *S. Cmty. and Urban Affairs Comm.: Statement to S. No. 82*, 2010 Leg., 214th Sess. (N.J. 2010), *available at* http://www.njleg.state.nj.us/2010/Bills/S0500/82_S1.PDF; Christopher DeGrezia, *Time's Up for Time of Decision Rule*, N.J. ZONING & LAND USE LAW (Mar. 18, 2010), http://www.njlandlaw.com/archives/776.

[176] DeGrezia, *supra* note 174.

[177] *See* 2010 N.J. Sess. Law Serv. Ch. 9, *available at* http://www.njleg.state.nj.us /2010/Bills/PL10/9_.PDF; *see also* S. 82, 2010 Leg., 214th Sess. (N.J. 2010), *available at* http://www.njleg.state.nj.us/2010/Bills/S0500/82_I1.PDF.

[178] 2010 N.J. Sess. Law Serv. Ch. 9, *available at* http://www.njleg.state.nj.us/2010 /Bills/PL10/9_.PDF.

individual and collective interests and raises constitutional concerns, it is important for courts to strike a proper balance in deciding zoning challenges. In order to serve these interests, courts must also weigh the broad zoning authority granted to municipalities against the importance of judicial intervention when individual rights are threatened. In providing New Jersey courts with more guidance for deciding zoning challenges, the majority's renewal of inverse spot zoning doctrine not only aids courts in applying the arbitrary or capricious standard, but also promotes greater harmonization between individual property rights and the public interest.