

# HOT BUTTON CONSIDERATIONS

## in Rezoning Hearings

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**M**ajor changes to land use often require a change to the underlying zoning of the property. A rezoning is a legislative change to the zoning map, and it may be initiated in one of three ways: (1) by motion of the zoning commission; (2) the passage of a resolution by the board of trustees; or (3) the filing of an application by an owner who wants to rezone their property. For the purposes of this article, we refer to any rezoning as a rezoning case or rezoning application, and the process for consideration is the same regardless of how it was initiated. Once the rezoning process begins, the zoning commission must hold a public hearing, and provide a recommendation to the board of trustees. The board of trustees also must hold a public hearing, and then either adopt, deny, or adopt a modification of the zoning commission's recommendation.

In the course of the public hearings, community members in attendance may ask questions about the proposed use of the property and its impact on the surrounding area. Generally speaking, those questions often fall into the following categories: schools, traffic, and property values. Questions may focus on potential impacts to their families, commute, and investments, and it is no surprise that these are at the front of a resident's mind.

We are often asked whether the zoning commission and board of trustees may consider these types of comments, especially since these topics can intersect with other governmental bodies' jurisdiction. If they can be considered, the next question is how much weight to give them in rendering a decision regarding a rezoning application.

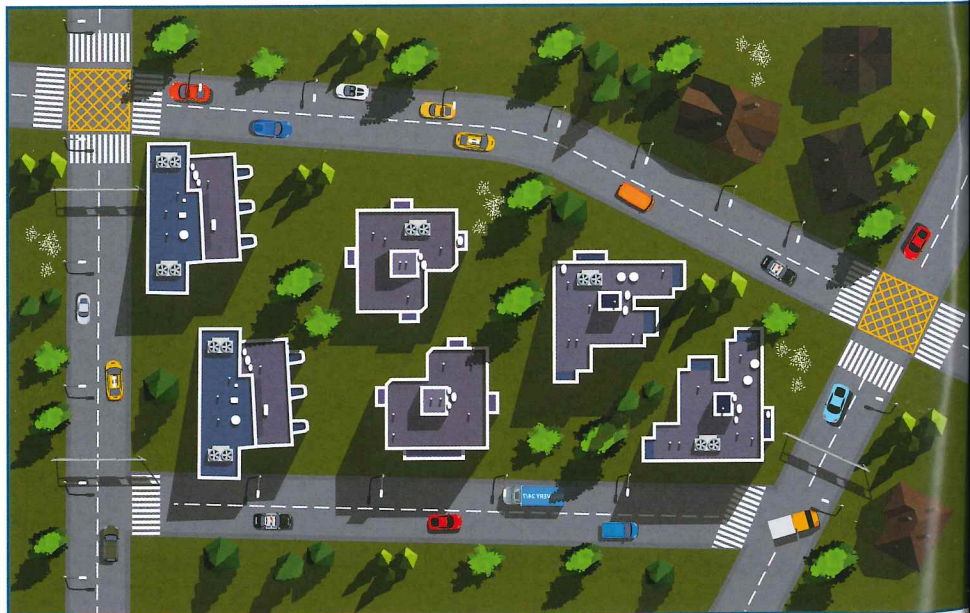
We have summarized the current legal guidance with respect to these categories, but laws are never static, so please consult your township legal counsel with respect to specific matters.

### Schools

We'll start with the leader of the pack: schools. There is no direct guidance as to whether a zoning body may or may not consider the impact that a rezoning may have on schools. The Supreme Court of Ohio has answered a different question involving the impact on schools, which is whether a board of county commissioners may consider school impact when deciding on an annexation petition. *Smith v. Granville Township Board of Trustees*, 81 Ohio St.3d 608 (2008). In *Smith*, the Court held that a board of county commissioners could not consider school issues, including

overcrowding, as a factor in deciding whether or not to grant an annexation petition because the annexation procedures provide the State Board of Education with a method to address inequities that may arise due to the annexation of a piece of property, and the process provides the State Board of Education with the "exclusive authority over school-related issues that arise due to an annexation." *Id.*

It is unclear whether or not a zoning body may consider school impact as one factor in making its determination on a rezoning application. Because of that lack of clarity, it is not advisable for the zoning body to make its determination based solely on school impact. While an annexation and a rezoning are completely different legal procedures, the policy considerations can be similar.





There is nothing in the Ohio Revised Code or case law that prohibits a zoning body from considering school issues when addressing a rezoning application. However, there will always be someone who will say “not in my backyard” with respect to a rezoning application and many, if not most, rezonings could have some impact on the local schools. Taking these ideas to their logical conclusion, if a zoning body could deny a rezoning application based solely upon school impact, nearly every rezoning application could be denied, which could lead to the perception that the zoning body is making decisions that are arbitrary or unreasonable.

### Traffic

Ohio courts have been clearer with respect to traffic and road issues than they have been for school issues regarding rezoning applications. The Supreme Court of Ohio has weighed in on this issue more than once, specifically stating that while traffic regulation might happen to be “a byproduct of zoning activities,” “increased traffic flow is not a sufficient reason to strike down a zoning ordinance...” *State ex rel. Synod of Ohio of United Lutheran Church in America v. Joseph*, 139 Ohio St. 229 (1942); *State ex rel. Killeen Realty Co. v. East Cleveland*, 169 Ohio St. 375 (1959). Later, interpreting the Killeen Realty case, the Eighth District Court of Appeals opined that, “[a]dmittedly, traffic patterns should be taken into consideration when a municipality designs a comprehensive zoning plan. However, ... the problem of additional traffic hazards must be secondary to the right of a property owner to have the use of his property in a manner that is consistent with its location.” *Pure Oil Div. of Union Oil Co. of California v. City of Brook Park*, 26 Ohio App.2d 153 (8<sup>th</sup> Dist.1971).

In summary, Ohio courts have held in various cases that traffic is an issue that must not be sought to be regulated by a zoning decision. Therefore, traffic considerations should not determine a zoning commission’s decisions on rezoning applications.



Village of Hudson, Ohio

### Other Factors

The Ohio Supreme Court held that there is a legitimate governmental interest in maintaining the aesthetics of the community and, as such, aesthetics may be a consideration taken into account in enacting zoning legislation, under the general welfare aspect of the local government’s police power. *Village of Hudson v. Albrecht, Inc.*, 9 Ohio St.3d 69 (1984). In *Village of Hudson*, it is important to note that aesthetics were not the only factor on which the village council based its decision; the village also indicated concern for “monetary interests of protecting real estate from impairment and destruction of value.” *Id.* at 73.

Another court evaluated a planning commission’s consideration of a combination of factors, and upheld the decision of the commission. *Ziss Bros. Const. Co. v. City of Independence, Ohio*, 439 Fed.Appx. 467 (6<sup>th</sup> Cir.2011). The commission rejected a preliminary subdivision plan because it failed to minimize detrimental environmental impacts, the commission was concerned about the storm water management plan, the company’s proposed T-turnaround was not permitted by city code, and the plan failed to supply all documents or information required by city ordinances.” *Id.* The court determined that the combination of those factors and the company’s failure to supply necessary information did warrant the commission’s rejection. *Id.* That being said, the court did not provide further detail whether any single one - or a different combination - of the factors would have been sufficient for the planning commission to reject the subdivision plan.

What is abundantly clear is that even though there can be similarities and trends, the comments raised in a public hearing are as different as each rezoning case or application. Ohio courts are the most clear that traffic cannot be a factor, and property values can be one, but not the only, factor. Obviously, the specific facts and circumstances of a rezoning are paramount, but these may be some helpful considerations when residents present concerns about impacts on schools, traffic, and property values. ■

### Property Values

Multiple Ohio courts, including the Supreme Court of Ohio, have established clearly that diminished property value is not, by itself, a sufficient basis on which to deny zoning. *State ex rel. Synod of Ohio of United Lutheran Church in America v. Joseph*, 139 Ohio St. 229 (1942); *State ex rel. River Grove Park, Inc. v. Kettering*, 118 Ohio App. 143 (1962); *Renner v. Makarius*, 2nd Dist. Montgomery No. CA 5993, 1979 WL 208364 (1979).

However, while it cannot be the only factor, it may be one factor that is considered by a zoning body in reaching its decision. *Partain v. City of Brooklyn*, 73 Ohio Law Abs. 481 (Cuyahoga 1955).

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