Land Use - Goffinet v. County of Christian: New Flexibility in Illinois Zoning Law

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INTRODUCTION

In Goffinet v. County of Christian,1 the Illinois Supreme Court ruled that conditional rezoning is not invalid per se. The decision finally resolves the uncertainty which has existed in Illinois zoning law2 since statements by the supreme court in dicta fourteen years ago.3 On its face, the decision provides Illinois zoning authorities with an alternative to strict Euclidean zoning.4 In practice, the usefulness of conditional rezoning as a land use control will depend on the ability of local government to impose conditions consistent with traditional zoning guidelines.5

This article will discuss the problem of conditional rezoning: the definitional ambiguity, the objections which have been raised, and the suggested alternatives. The Goffinet case will be examined in light of its impact on Illinois law and in comparison with solutions offered by other jurisdictions. Finally, this article will propose guidelines for the proper implementation of conditional rezoning in Illinois after Goffinet.

CONDITIONAL REZONING: A BRIEF ANALYSIS

Clarifying the Definitional Ambiguity

There has been little attempt by courts to define with any precision what is meant by the term “conditional rezoning.” Much of the difficulty in this area of land use law stems from the failure of courts to distinguish “conditional rezoning” from “contract zoning.” Contract zoning, properly understood, describes a situation in which a

1. 65 Ill. 2d 40, 357 N.E.2d 442 (1976).
4. The term is derived from the landmark zoning case, Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). Euclidean zoning involves the division of land within a jurisdiction into districts, each district having only a limited number of permissible uses. See generally 1 R. Anderson, American Law of Zoning §§ 8.14, 8.15, 8.17 (1st ed. 1968).
5. See text accompanying notes 101-102 infra.
property owner and a local governmental unit undertake reciprocal obligations with respect to a zoning ordinance amendment. The property owner gives the governmental unit an enforceable promise to perform some act as consideration for a requested zoning change. The act may or may not be related to the intended property use but it is always one not otherwise required by the applicable zoning ordinance. The owner’s promise may be to restrict the use of the property to only one of the allowable uses, make certain improvements to the property, dedicate a portion of the land to the local government, or donate a sum of money to the municipality or county.

In return, the governmental zoning authority binds itself in contract to rezone the property. The zoning authority may also agree that the applicable zoning or building code will remain unchanged for a specified period of time. The most identifiable characteristic of contract zoning is the exercise of the zoning power pursuant to an express bilateral agreement between the landowner and the zoning authority.

In a conditional rezoning case, a governmental body obtains the property owner’s commitment to subject the property to certain regulations as a condition precedent to the approval of the rezoning petition. The key here is the absence of any agreement to rezone the subject property by the governmental body. The owner’s commitment may be exacted at any time before or after the enactment of the rezoning ordinance. Regulations which condition the rezoning amendment assume a variety of forms. Typical are conditions which relate to recorded deed restrictions limiting use or require-

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7. See generally 1 R. ANDERSON, AMERICAN LAW OF ZONING § 8.21 (1st ed. 1968); D. HAGMAN, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW § 94 (2d ed. 1971); 1 N. WILLIAMS, AMERICAN PLANNING LAW, LAND USE, AND THE POLICE POWER § 29.01 (1974).
9. Hartnett v. Austin, 93 So. 2d 86 (Fla. 1956).
14. See Shapiro, supra note 6, at 270-71.
15. One commentator suggests that exacting conditions prior to the passage of the rezoning change is different in form, substance, and legal effect from true conditional rezoning. Schaffer, supra note 6, at 43. The usual situation appears to be that the agreement by the property owner is obtained in advance of the zoning change. See, e.g., State ex rel. Zupancic v. Schimenz, 46 Wisc. 2d 22, 174 N.W.2d 533 (1970); Bucholz v. City of Omaha, 174 Neb. 862, 120 N.W.2d 270 (1963). But see, Hartnett v. Austin, 93 So. 2d 86 (Fla. 1956).
ments for open space and buffer zones. Regardless of the form the conditions take, or the time at which those conditions are imposed, all conditional rezoning ordinances share one common element. The property owner, at the suggestion of the zoning authority or of his own volition, unilaterally agrees to take some action which may induce the desired change of zoning classification.

Although it has been persuasively argued that no basic difference exists between contract and conditional rezoning, it is essential that the two terms be recognized as separate and distinct concepts. This distinction is critical to the rational explanation of the case law concerning zoning with conditions.

Criticisms of Conditional Rezoning

Traditionally, the same arguments have been advanced against both contract zoning and conditional rezoning. This unfortunate situation results primarily from the failure or inability of courts to perceive adequately the differences between these two zoning techniques. However, close scrutiny of the major criticism of contract zoning reveals that the same criticism is inapplicable to conditional rezoning.

Courts have generally held that contract zoning constitutes an improper bargaining away of a governmental unit's police power: "[A] contract made by a zoning authority to zone or rezone or not to zone is illegal and the ordinance is void because a municipality may not surrender its governmental powers and functions or thus inhibit the exercise of its police or legislative powers." This argu-

18. See Scrutton v. County of Sacramento, 275 Cal. App. 2d 412, 79 Cal. Rptr. 872 (1969). In Scrutton the California Court of Appeals stated: "The phrase contract zoning has no legal significance and simply refers to a reclassification of land use in which the landowner agrees to perform conditions not imposed on other land in the same classification." Id. at 419, 79 Cal. Rptr. at 878. Since the court seems to equate contract with conditional rezoning, the transaction in Scrutton was sustained despite its contractual nature. See also Trager, Contract Zoning, 23 Md. L. Rev. 121 (1963), where it is suggested that all conditional rezoning is contract zoning. The explanation for this approach is that when a municipality passes a zoning amendment which is within its discretion, it gives consideration for which it may ask return promises from the person seeking the zoning change. Therefore, a zoning amendment subject to conditions will constitute "contract zoning." Another commentator maintains that conditional rezoning is a broad concept, composed of both zoning by bilateral contractual arrangement and unilateral imposition of controls. See Stefaniak, supra note 2. Others have taken the position that the line between contract and conditional rezoning might be too tenuous to be of practical significance. See 3 A. Rathkopf, The Law of Zoning and Planning § 74-9 (4th ed. 1975).
Conditional rezoning usually assumes two basic forms. First, if a governing body can legislate by contract, "each citizen would be governed by an individual rule based upon the best deal he could make with the governing body." This is clearly in derogation of the principle that the power to zone, which is derived from the police power, must be exercised for the benefit of the public health, welfare, and safety, and not in furtherance of private interests. Second, the bargaining away of the zoning authority violates the principle that zoning laws are flexible and must remain subject to change. By entering into a contract to zone, the governing body has agreed expressly or impliedly that the subject property will remain zoned as provided in the contract. Such action amounts to a surrender of the power to govern. An agreement which binds a local government in this manner is clearly void.

Conditional rezoning, on the other hand, does not involve a bargaining away of legislative power, since there is no commitment by the governmental unit to rezone. No legislative power has been surrendered by accepting the conditions to the rezoning petition. The strongest criticism against conditional rezoning in this context is that the conditions may have "blurred" the legislative judgment to rezone. This objection does not warrant a rule which invalidates conditional rezoning in every case. Nevertheless, there are at least four objections leveled against conditional rezoning.

1. Lack of Statutory Authority

In general, the most forceful argument against conditional rezoning concerns the lack of express statutory authority to impose conditions on a rezoning amendment. Some courts have held the condi-

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20. Hartnett v. Austin, 93 So. 2d 86, 89 (Fla. 1956).
24. See note 19 supra.
25. See Shapiro, supra note 6.
27. The zoning enabling legislation for Illinois municipalities is found in ILL. REV. STAT. ch. 24, § 11-13-1 et seq. (1975) and ILL. REV. STAT. ch. 94, §§ 3151-61 (1975) for counties. Neither statute provides a zoning authority with the power to impose conditions upon a request for a zoning change.
tional rezoning of property ultra vires and void. If the power to conditionally rezone exists at all, it must be implied from other powers delegated to the zoning authority.

The New York Court of Appeals in Church v. Town of Islip reached a different result. In Church, the town board consented to a change of zone, subject to the condition that the rezoning petitioners conform the property to certain specifications. Since the board could have rezoned the property without conditions or denied the petition in its entirety, the court concluded that reclassifying land with attendant conditions was also within the power vested in the town board.

Another approach to conditional rezoning and statutory justification was suggested in Scrutton v. County of Sacramento. The court in Scrutton maintained that the state zoning statute merely provided a framework for standardizing local zoning practices, and was not intended to specifically establish all the forms zoning might take. The court stated: “The state statutes’ silence on conditional rezoning is not a denial of power to pursue that practice. The practice must find its own justification as an appropriate exercise of the local police power.”

This authority to impose conditions on zoning amendments might be implied from the authority to grant variances or special uses subject to conditions. In jurisdictions where the authority to condi-

30. Id. at 255, 168 N.E.2d at 682, 203 N.Y.S.2d at 867. A strong criticism of the case appears in 1 N. Williams, American Land Planning Law § 29.03 (1974).
32. Id. at 417, 79 Cal. Rptr. at 876.
34. Ill. Rev. Stat. ch. 24, § 11-13-1.1 (1975) gives municipalities the power to grant special uses, particular uses established in the zoning ordinance which may be allowed if certain facts exist. See text accompanying notes 63-65 infra.
35. See generally Strine, The Use of Conditions in Land Use Control, 67 Dick. L. Rev. 109 (1963) [hereinafter cited as Strine]. Ill. Rev. Stat. ch. 24, § 11-13-1.1 (1975) expressly empowers municipalities to impose conditions on special use permits. Section 7 of the Standard State Zoning Enabling Act authorizes a board of zoning appeals to attach conditions to both special uses and variances. Ill. Rev. Stat. ch. 24, § 11-13-4 (1975) and Ill. Rev. Stat. ch. 34, § 3154 (1975) do not grant zoning officials the power to place conditions on variances. However, in O’Brien v. City of Chicago, 347 Ill. App. 45, 105 N.E.2d 917 (1952) the court held that a city has the unquestioned right to exercise its police power by imposing conditions, as long as the conditions are reasonably related to the public health, morals, safety and welfare. O’Brien, which involved zoning for a church, may only be peripheral authority, however, since there are special zoning rules for churches. See Goffinet v. County of Christian, 30 Ill. App. 3d 1089, 1094, 333 N.E.2d 731, 733 (1975).
tion variances and special uses is implied by the courts, the power to condition rezoning requests is sometimes implied. This assumes that variances, special uses, and conditional rezoning are intended to produce the same results. In jurisdictions which provide express statutory authority to condition either a variance or a special use, a persuasive argument can be advanced against implied authority to conditionally rezone. If the power to impose conditions on variances and special uses is expressly provided for by statute, it is clear that the legislature considered conditional zoning techniques. The absence of express authority to place conditions on zoning amendments compels the conclusion that this procedure was intended to be excluded from the amendment process.

Notwithstanding the lack of statutory authority to conditionally rezone, an Illinois home rule municipality or county may have the power to enact a conditional rezoning ordinance. The state zoning enabling act does not apply to a home rule municipality or county. Presumably, if the conditional home rule rezoning ordinance is constitutional, it will foreclose a challenge of ultra vires action.

The majority of courts which have considered conditional rezoning have bypassed the statutory justification question. When confronted with conditions in a rezoning case, these courts have conveniently labelled the activity "contract zoning." Although contract zoning has been the principal basis for invalidating conditional ordinances, other, less substantial criticisms have also been raised.

2. Spot Zoning

Conditional rezoning has been objected to on the ground that it constitutes spot zoning which destroys the uniformity that zoning
is intended to create. Spot zoning is a change in zoning applicable only to a small area, which is incompatible with the comprehensive land use plan for the community. Both the procedure and the result of spot zoning are considered improper. Procedurally, the practice of spot zoning is viewed with disfavor because the rezoning marks a particular landowner for special treatment inconsistent with the purposes of the pre-planned land controls. This criticism focuses on the assumption that spot zoning unfairly discriminates against those who have neither the political influence to obtain a rezoning nor the financial resources to contest a zoning change.

Spot zoning is objectionable in substance because it undermines the basic rationale of zoning:

To have varying conditions and regulations on different parcels of property in a district having similar uses is the very antithesis of uniformity within a district. Restrictions which do not operate on all alike cannot be justified under the statute or the police power. If some parcels of land are zoned on the basis of variables that could enter into private contracts, then the whole scheme and objectives of community planning and zoning would collapse.

Spot zoning is detrimental only when the zoning change does not conform to a comprehensive plan. Where the proposed use is consistent with the general policies of the plan, benefits the community, and is fair and reasonable, the requirement of conformity is satisfied.

Absolute conformity is not mandatory nor is spot zoning invalid in every instance; validity is tested on a case-by-case basis.

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42. Reskin v. City of Northlake, 55 Ill. App. 2d 184, 189, 204 N.E.2d 600, 603 (1965).
43. Id. at 189, 204 N.E.2d at 603.
44. Sections 2 and 3 of the Standard State Zoning Enabling Act provide that all regulations within a given district must be uniform, and that they must be made in accordance with a comprehensive plan.
46. See generally Haar, "In Accordance with a Comprehensive Plan," 68 Harv. L. Rev. 1154 (1955), where alternative approaches to the problem of conformity to the comprehensive plan are discussed. Although there is no statutory requirement in Illinois for either uniformity or conformity to a comprehensive plan, the courts have stated that regulations cannot be out of harmony with comprehensive planning for the good of the community as a whole. See, e.g., Fifteen-Fifty North State Building Corp. v. City of Chicago, 15 Ill. 2d 408, 155 N.E.2d 97 (1958); Duryea v. City of Rolling Meadows, 119 Ill. App. 2d 445, 256 N.E.2d 32 (1970).
tional rezoning, if objected to on the ground that it constitutes spot zoning, should also be treated on a similar case-by-case basis. An ordinance which satisfies the requirement of compatibility with the basic plan should not be nullified on the basis of spot zoning objections alone.50

3. Reverter Clauses

Many conditional rezoning ordinances contain a reverter clause. The reverter clause specifies that upon the property owner's failure to fulfill certain conditions, the land will automatically revert to its prior use classification.51 Conditional rezoning ordinances are further criticized because reverter clauses are often included. Some courts suggest that the operation of the reverter amounts to a second rezoning, without compliance with the statutory procedures for notice, hearing, and appeal of rezoning decisions.52 One court adopted this interpretation of reverter clauses, yet sustained the general validity of conditional rezoning.53 The court stated that regardless of whether the reversion was automatic or enforced by a board of supervisors, the "proceedings on their face would characterize the reversion ordinance as a forfeiture rather than a legislative decision on land use. An ordinance so conceived is not a valid exercise of the police power."54 According to the Illinois Supreme Court, however, the inclusion of a reverter clause in a conditional rezoning ordinance is not sufficient to invalidate the ordinance.55

4. Improper Considerations

Another argument against conditional rezoning is that such ordinances are likely to result from undue influences on local legislators and administrators.56 Giving local zoning authorities broad discre-
tion to place conditions on a zoning amendment fosters corruption. While there can be little doubt that the more leeway local authorities are given the greater the potential for abuse, the fact remains that the potential for abuse in a conditional rezoning case is no greater than in other areas where public officials enjoy wide discretion. Moreover, courts are not without standards to judge the propriety of a zoning authority's action.\(^{57}\)

**Alternatives to Conditional Rezoning**

In addition to rezoning amendments, there are at least two other procedures used to alter the zoning classification of a tract of land. A zoning authority can achieve results similar to conditional rezoning by granting variances and special uses.\(^{58}\)

In Illinois, municipalities and counties have express statutory authority to modify the zoning regulations applicable to specific tracts under certain circumstances.\(^{59}\) A variance (historically known as a "variation") is granted only when compliance with the ordinance will cause "practical difficulties or particular hardship" to the landowner.\(^{60}\) As an alternative to conditional rezoning, however, the variance procedure is unsatisfactory:

> The variation procedure as prescribed in the act is designed to provide a flexible method for relaxing the rigid requirements of the ordinance in cases of individual need. It is not designed to work major changes in the zoning plan. Amendments by the legislative body are available for that purpose.\(^{61}\)

In the typical conditional rezoning case, the petitioner is seeking a complete change in the use classification rather than relief from the hardship of the existing ordinance. A rezoning petitioner might also be unable to satisfy the "practical difficulty or particular hardship" test. Also, the fact that the property will generate more profit under a different use is insufficient to justify a variance.\(^{62}\)

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57. See text accompanying notes 101-02 infra.
60. In order to show the required hardship or difficulty three tests must be met: (1) the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone; (2) the plight of the owner is due to unique circumstances; and (3) the variation, if granted, will not alter the essential character of the locality. Ill. Rev. Stat. ch. 24, § 11-13-4 (1975).
62. Welton v. Hamilton, 344 Ill. 82, 176 N.E. 333 (1931). See also River Forest State Bank
As a rule, special use permits are the most acceptable alternative to conditional rezoning. A special use is the zoning authority’s grant to use property in a particular manner contrary to the zoning ordinance. Special uses are specifically listed in the text of the zoning ordinance as an allowable departure from the particular use classification. The standards for granting special use permits are established at the time the ordinance is enacted. To obtain a special use, there must be a showing of substantial compliance with these standards.

Conditional rezoning and special uses are theoretically different concepts. A special use involves only one named use, whereas a rezoning amendment permits a wide variety of uses in addition to the particular use the applicant seeks. A rezoning amendment is a change in the basic text and map of the zoning legislation, but a special use involves no permanent change in the classification of the property.

This theoretical distinction, however, breaks down in practice. A zoning authority can impose any conditions on a special use which it reasonably believes necessary to conform the use to the standards established in the ordinance. This factor makes a conditional rezoning ordinance virtually indistinguishable from a special use permit in certain circumstances. If the particular condition to a rezoning ordinance restricts the property to a single use, a special use with conditions might accomplish the same result.

The Advantage of Conditional Rezoning

Conditional rezoning offers a distinct advantage over traditional zoning methods. The use of conditions in the rezoning process provides greater flexibility in administering land use policy. An applicant for a zoning change under the traditional scheme faces an all-or-nothing situation. If the existing ordinance does not list the proposed use as a special use, the rezoning petition must be granted or denied as presented. If the rezoning is granted, the applicant is not restricted to the use which he proposed but can put the property to any use permitted in the new zone classification. Since the zoning authority cannot qualify the rezoning, the change of classification

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65. See generally Shapiro, supra note 6, at 281.
67. See generally Shapiro, supra note 6.
may force unnecessary inconvenience or hardship on the adjacent property owners. On the other hand, if the rezoning petition is rejected, the locality may be deprived of the economic or social benefits which the new use might otherwise provide. In addition, the property owner is denied the opportunity to put the property to its most profitable use. Rigid adherence to this absolute scheme elevates form over substance.

In jurisdictions approving conditional rezoning, zoning officials have the means to balance the conflicting interests of the rezoning applicant and the adjacent property owners. As a condition precedent to a rezoning, the zoning officials may require the landowner to record a restrictive covenant limiting the use of the premises to exclude those uses which are undesirable to neighboring property owners. If this condition is satisfied the zoning authority may enact an ordinance rezoning the property; however, it is not obligated to do so. Conditioning the rezoning ordinance in this manner enables the property owner to obtain the use change and protects the surrounding property from the potential adverse effects of the zoning change. The power to conditionally rezone also stimulates the development of property which, under the traditional zoning scheme, would remain undeveloped.

**Goffinet v. County of Christian**

*The Factual Background*

The vendor and option purchaser68 of certain land located in Christian County, Illinois, petitioned the zoning board of appeals for a change in zoning from agricultural (AG-1) to heavy industrial (I-2). The rezoning was requested to permit Illinois NapGas Company, the option purchaser, to construct and operate a synthetic gas production plant on the site.69 The comprehensive plan for Christian County states that the highest and best use of the subject tract, located in a primarily agricultural area, is for agricultural purposes.70 However, the plan also stresses the need for more industrial development to stimulate the local economy and to halt the emigration of the county’s youth due to lack of jobs.71

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68. The fee owner was selling 236 acres of farmland to Illinois NapGas Company. Illinois NapGas is a wholly owned subsidiary of Trunkline which in turn is wholly owned by Panhandle Eastern Pipeline, a natural gas supplier. Goffinet v. County of Christian, 65 Ill. 2d 40, 357 N.E.2d 442 (1976).
69. Petitioners also sought a variance from the I-2 height restrictions to construct several radio towers and stacks. Id. at 46, 357 N.E.2d at 444-45.
70. Goffinet v. County of Christian, 65 Ill. 2d at 45, 357 N.E.2d at 444.
71. The comprehensive plan states:
The proposed plant would change liquid hydrocarbon into methane gas suitable for sale, distribution, and use. The liquid hydrocarbon would be obtained from a pipeline which originates in the Gulf of Mexico and intersects a distribution pipeline one mile north of the proposed site. A pumping station would remove the liquid from the supply line and pump it into storage tanks. Upon completion of the production process, synthetic gas would be pumped into the distribution line. The site is highly desirable to Illinois NapGas for several reasons. The tract is located at the confluence of the supply line and the distribution line. The pumping station required for the operation is already located on the land, and there is an ample source of fresh water necessary to the production process.72

The Zoning Board of Appeals of Christian County, however, recommended the county board deny Illinois NapGas' rezoning petition. Despite this recommendation, the county board amended the zoning ordinance rezoning the property from AG-1 to 1-2. The county board recognized both the community need for synthetic gas energy and the economic stimulus to the county.73 The ordinance

It's recommended that promotion of new industry be more actively stepped up in the county. All possible assistance should be given to hold and expand present industries.


72. Panhandle Eastern retained an environmental consulting firm to study the plant's potential impact on the environment. The results indicated that the plant would operate within the ecological and environmental standards established by local, state and federal law. Goffinet v. County of Christian, 65 Ill. 2d 40, 357 N.E.2d 442 (1976).

73. The Goffinet amending ordinance article I provided in pertinent part:

Section 6. That the best use of the land is for the uses of I-2 heavy industrial to permit the storage of naptha, petroleum products, and similar hydrocarbon products, and the processing of the same into pipe line quality gas suitable for distributor, utility, and industrial purposes.

Section 7. That permitting the foregoing I-2 heavy industrial use of the premises will not adversely affect the use of any of the neighboring land and will have no detriment on the value of the neighboring and adjoining tracts of land.

Section 8. That there now exists in Christian County, Illinois, and the surrounding area a shortage of natural gas, substitute natural gas, and synthetic natural gas, resulting in a gas crisis affecting residents of Christian County, Illinois.

Section 10. That the present and projected shortage of natural gas supplies available for use in Christian County is and will require many persons in Christian County, Illinois to find alternative sources of energy in lieu of natural gas, and the alternative sources of energy are at this time more expensive and limited in availability.

Section 11. That the public health, safety and welfare of Christian County, Illinois will be promoted by permitting the construction of the proposed facility by Illinois NapGas Company in an effort to eliminate the present natural gas shortage.

Section 12. That the best interest of Christian County will be served by permitting the rezoning and variance requested in the Petition for the following additional grounds:
specified that the rezoning was conditioned on the use of the premises solely as a gas production facility.  

Several adjacent property owners filed suit in the Circuit Court of Christian County seeking a declaration that the amendment to the zoning ordinance was void. The complaint alleged, inter alia, that the ordinance placed restrictions on the property not applicable to other property in the same use classification. Hence, plaintiffs contended the zoning action amounted to conditional rezoning and spot zoning which rendered the ordinance invalid. The trial court rejected these arguments and upheld the ordinance on the ground that it was beneficial to the public health, welfare, and safety.

On appeal, the Illinois Appellate Court for the Fifth District affirmed the trial court’s order. The appellate court held that not every conditional rezoning ordinance adopted by a legislative zoning agency in Illinois is invalid per se. The ordinance in question was designed for the protection of the public interest and was a reasonable exercise of the zoning power. The plaintiffs were granted leave to appeal to the Illinois Supreme Court. Two issues were presented to the supreme court: (1) whether the rezoning ordinance was void because it contained unauthorized restrictions amounting to condi-

(a) The proposed facility would tend to increase the supply of natural gas necessary for farm drying operations in Christian County, Illinois.

(b) The proposed facility will increase the assessed valuation in the county and therefore, either (1) lower the overall tax rate on each tract of land in the county, or (2) increase the tax revenue in the county.

(c) The proposed facility would increase the employment during the construction of the facility and during the maintenance and operation of the facility.

(d) That the proposed facility would tend to stimulate the economy of Christian County, Illinois.

Section 13. That the rezoning of the 236 acres, more or less, from agricultural use to heavy industrial use will not significantly affect farm production in Christian County, Illinois, for the reason that there is now lying idle in Christian County, Illinois, 49,198 acres of tillable farmland.

Id. at 46-47, 357 N.E.2d at 445.

74. Article II provided in relevant part:

Section 5. That the rezoning of said land to I-2 heavy industrial shall be effective as of the date hereof and shall be subject to actual use of the premises for gasification plant facilities as herein proposed. Upon removal of gasification facilities located upon said land by Illinois NapGas Company, its successors or assigns, said land shall revert to a zoning classification of A-1 agricultural.


75. Plaintiffs joined the County of Christian, the County Board, Illinois NapGas, Panhandle Eastern Pipeline and the fee owner as defendants. Plaintiffs also sought temporary and permanent injunctions to prevent defendants from enforcing the ordinance. Abstract of Record at 2-5, Goffinet v. County of Christian, 30 Ill. App. 3d 1089, 333 N.E.2d 731 (1975).

76. Id. at 56.


78. Id. at 1096, 333 N.E.2d at 736.
tional rezoning, and (2) whether the rezoning ordinance constituted illegal spot zoning.79

The Illinois Supreme Court Opinion

The supreme court first considered appellants' contention that the ordinance was invalid because it contained conditions. Appellants relied on two earlier supreme court decisions to support this conclusion. In Treadway v. City of Rockford (Treadway I),80 involving an amending ordinance which rezoned property from residential to local business, the court stated in dicta:

The ordinance in question is not, however, an unconditional amendment rezoning the property from a residential to a local business classification. It is conditional upon the owner's entering into a covenant setting forth in some detail the nature of the improvements to be erected on the property. Such conditional amendments have not fared well in the courts of other jurisdictions, and have frequently been invalidated either because they introduce an element of contract which has no place in the legislative process or because they constitute an abrupt departure from the comprehensive plan contemplated in zoning.81

Adjacent property owners attacked the ordinance on the ground that it was unreasonable and unconstitutional as applied to the subject property. The trial court upheld the zoning ordinance, but imposed conditions on the rezoning in addition to those contained in the ordinance. It was the trial court's conditions and not those imposed by the zoning authority which lead to reversal in the supreme court.82

The same ordinance was presented to the court again one year later. In Treadway v. City of Rockford (Treadway II),83 the court stated:

The rezoning ordinance involved in this appeal was passed by the city council of the City of Rockford on June 26, 1962, and reclassifies the subject property from "A" residential to local business, without the conditional limitations which were the basis of our prior remandment.84

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81. Id. at 496-97, 182 N.E.2d at 224.
82. 24 Ill. 2d 488, 491, 182 N.E.2d 219, 221. The court misinterpreted the rule in Sinclair Pipeline Co. v. Village of Richton Park, 19 Ill. 2d 370, 167 N.E.2d 406 (1960). In Sinclair, the supreme court held that in a zoning case a court could declare an ordinance valid or invalid as applied to the specific use at issue in the litigation.
83. 28 Ill. 2d 370, 192 N.E.2d 351 (1963).
84. Id. at 371, 192 N.E.2d at 353.
Although appellants in *Goffinet* argued that the language of *Treadway I* and *Treadway II* clearly established the rule in Illinois that conditional rezoning is invalid, the Illinois Supreme Court rejected this analysis. The *Goffinet* court noted that the illegal conditions referred to in *Treadway II* were erroneously imposed by the lower court and not by the zoning authority. *Treadway I* and *Treadway II* are not authority for invalidating conditional rezoning. In addition, the supreme court distinguished several appellate court decisions construing the *Treadway* cases.

In *Hedrich v. Village of Niles*, adjacent property owners filed suit contesting the rezoning of certain property from residential to limited manufacturing. The pleadings indicated that the rezoning was granted solely because petitioner agreed to provide the village with collateral benefits. On procedural grounds the trial court refused to reach the question of whether these added considerations invalidated the zoning ordinance.

On appeal, the issue considered was whether the court erred in excluding evidence relating to the ancillary considerations for the rezoning. Reversing the trial court on the procedural issue, the appellate court observed that the zoning amendment was conditioned on agreements and donations intended for the benefit of the village. This “places [the village trustees] in the questionable position of bartering their legislative discretion for emoluments that had no bearing on the merits of the requested amendment.”

As *Goffinet* correctly notes, conditional rezoning was not a proper issue on appeal in *Hedrich*, and, therefore, the case is not authority for a rule invalidating such a procedure. *Hedrich* does not absolutely condemn the rezoning arrangement in the case, but rather suggests by implication that conditions based on the merits of the request

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87. The rezoning petitioner, an industrial land developer, had agreed to give the village park district a seven year option to buy a portion of the subject property. Petitioner would, at an expense of $175,000, develop the property for use as a golf course, and fine a purchaser for the revenue bonds issued by the village to finance any exercise of the village’s option to purchase. After 10 years, petitioner would donate $550,000 of the purchase price (more than one-half) to the village. In addition, the petitioner agreed to give the village one acre of land for a fire station, $75,000 for street improvements, and $10,000 for a traffic survey. Defendants counsel stipulated that petitioner’s agreement was conditioned on the zoning change. *Id.* at 72-73, 250 N.E.2d at 793.
88. The court stated: “We do find error, however, in the court’s refusal to consider the issue which surfaced during the trial. The issue must first be determined by the trial court before we can consider it.” *Hedrich v. Village of Niles*, 112 Ill. App. 2d 68, 79, 250 N.E.2d 791, 796 (1969).
89. *Id.* at 78, 250 N.E.2d at 796.
Conditional Rezoning might be acceptable.1

In Cederberg v. City of Rockford,96 a landowner executed and recorded a restrictive covenant limiting the use of his property as a condition precedent to the enactment of a rezoning ordinance.92 The validity of the ordinance was contested by a subsequent purchaser of the property. The trial court upheld the ordinance, but struck the restrictive covenant as an improper attempt to control the use of the land. On appeal, the parties stipulated that the restrictive covenant was void. Thus, the only issue presented was whether the void restrictive covenant invalidated the rezoning ordinance. The appellate court held the ordinance invalid since “the City gave no consideration to the statutory standards of public health, safety, comfort, morals and welfare.”93 The Cederberg court cited Treadway I and Hedrich for the proposition that zoning ordinances should not be the subject of bargaining and contract.

The supreme court in Goffinet distinguished Cederberg on the basis that the ordinance there was enacted solely because of the restrictive covenant, without concern for the public interest. The precise issue in Cederberg was not whether conditional rezoning was invalid, but whether improper conditions nullified the ordinance in its entirety.94 Since the discussion of conditional rezoning was not germane, Cederburg did not support appellants’ position in Goffinet.

The Goffinet court also distinguished Andres v. Village of Flossmoor.95 In Andres, nine conditions were imposed by an ordinance which rezoned property from R-2 Single Family Residential to R-6 Multiple Family Residential.96 The distinctive feature of Andres was the agreement between the landowner and village which contained these conditions as essential terms. Without distinguish-

90. See also Shibata v. City of Naperville, 1 Ill. App. 3d 402, 273 N.E.2d 690 (1971). As in Hedrich, the case was disposed of on procedural grounds. The court, however, stated in a footnote that the legal status of “contract zoning” was unclear in Illinois. Treadway I and Hedrich were cited for their disapproval of such ordinances.
92. The covenant provided that the property could only be used for one of the 44 permissible uses in the rezoned district. Id. at 985, 291 N.E.2d at 250.
94. Id.
96. The petitioner desired to construct 18 two-family ranch homes. Among the conditions to the rezoning were provisions that: (1) the use be limited to single story attached two-family dwellings; (2) general landscaping would be subject to village approval; (3) construction commence within 90 days of the enactment of the rezoning; (4) the owner donate $1,000 per building to the general village fund; and (5) the owner enter a contract with the village containing all the restrictions and conditions. The contract was to be recorded and made a covenant running with the land. Id. at 658, 304 N.E.2d at 705.
ing between contract zoning and conditional rezoning the appellate court held the ordinance invalid: "Flossmoor Ordinance No. 500 is the very model of invalid conditional zoning, falling squarely within the general policy considerations which strongly support the Treadway rule invalidating such ad hoc conditional rezoning amendments."\(^97\) The court stated that Treadway I "constitutes a succinct and perceptive analysis of the reasons why, absent general statutory authorization and standards, the making of individualized zoning deals by local municipalities, apart from the provisions they are willing to adopt as general zoning regulations, is an invalid abuse of the zoning power."\(^98\)

Goffinet makes it clear that this reliance on Treadway I is misplaced. Although the general policy considerations in the Treadway I dicta are acceptable, the case is not determinative on the issue of conditional rezoning. Goffinet also distinguishes Andres on the facts. The conditions imposed by the Village of Flossmoor introduced contract considerations which are not appropriate in the legislative context.\(^99\)

The supreme court concluded that conditional rezoning in Illinois is not invalid per se.\(^100\) The validity of a conditional ordinance should be measured by those considerations set forth in LaSalle National Bank & Trust Co. v. County of Cook.\(^101\) In making its determination, a court should consider (1) the existing uses of nearby property, (2) the extent to which property values are diminished by the zoning restrictions, (3) the extent to which the destruction of property values of plaintiff promotes the public health, welfare, and safety, (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner, (5) the suitability of the property for the zoned purposes, and (6) the length of time the property has been vacant as zoned.\(^102\)

The ordinance in Goffinet substantially met these tests. The court emphasized the unique characteristics of the property, and the fact that the proposed plant would provide a needed source of energy.\(^103\) There was no evidence that the value of adjacent property would

\(^{98}\) Id. at 659, 304 N.E.2d at 703.
\(^{100}\) Id. at 51, 357 N.E.2d at 448.
\(^{101}\) 12 Ill. 2d 40, 145 N.E.2d 65 (1957).
\(^{102}\) Id. at 46-47, 145 N.E.2d at 69.
\(^{103}\) A hospital, school, heating plant and several local businesses in Christian County are "interruptable" gas customers. When the supply of gas is inadequate, these customers are the first to have their gas supplies curtailed. Abstract of Record at 53, Goffinet v. County of Christian, 30 Ill. App. 3d 1089, 333 N.E.2d 731 (1975).
decline; to the contrary, the economy of the county would be sub-
stantially improved by the operation of the plant.

Appellants' second major argument, that the amendment consti-
tuted illegal spot zoning, was summarily treated. The court stated
that the rule applicable to spot zoning in Illinois was enunciated in
Fifteen-Fifty North State Building Corp. v. City of Chicago:

While it is true that inconsistent zoning of small parcels is not to
be encouraged, this does not mean that every reclassification of a
single tract is void ipso facto; rather, it must be determined
whether such change is in harmony with a comprehensive plan for
orderly utilization of property in the locality; and the size of the
rezoned tract or area is merely one factor to be considered.\footnote{104}

The Goffinet court upheld the Christian County ordinance as con-
sistent with the general policies of the comprehensive plan. Accord-
ingly, it did not represent illegal spot zoning.

Appellants also challenged the reverter clause in the ordinance.\footnote{105}
The court agreed that the ordinance did not specify the means by
which the property would revert to agricultural use if the condition
was not satisfied. However, since the rezoning would be governed by
the county and state zoning legislation, the ordinance need not spec-
ify the means for reversion.\footnote{106} If it is determined that the conditions
have not been met and the property reverts to its initial use, the
statute provides the aggrieved party with the necessary due process
safeguards to challenge the findings.\footnote{107} A reverter clause, therefore,
is not a sufficient ground for invalidating a conditional rezoning
ordinance.

\textbf{Approaches in Other Jurisdictions}

Other jurisdictions are not consistent in the resolution of the con-
ditional rezoning issue. In many jurisdictions, the courts have failed
to distinguish whether their rules of decision apply to contract zon-
ing, conditional rezoning, or both. Those jurisdictions which have
condemned zoning with conditions have actually considered con-
tract zoning rather than conditional rezoning.

\footnotetext[104]{104}{15 Ill. 2d 408, 418-19, 155 N.E.2d 97, 102 (1959).}
\footnotetext[105]{105}{\textit{See} note 74 \textit{supra}; text accompanying notes 51-55 \textit{supra}.}
\footnotetext[106]{106}{The Christian County Zoning Ordinance states that administration and enforcement
of the ordinance are to be "in accordance with the provisions of Chapter 34, Sec. 3151-3161,
of Illinois Revised Statutes." The statute provides for the appointment by the county of an
officer to enforce the zoning ordinance. The officer is given power to make all necessary
decisions relating to the enforcement of the ordinance. The court indicated that such officers'
duties would include the power to enforce special use permits and conditions to rezoning
ordinances. Goffinet v. County of Christian, 65 Ill. 2d 40, 53, 357 N.E.2d 442, 449 (1976).}
\footnotetext[107]{107}{\textit{Ill. Rev. Stat.} ch. 34, § 3156 (1975).}
The principal jurisdictions holding zoning with conditions invalid are New Jersey,108 Florida,109 and Maryland.110 The case law from these jurisdictions is factually similar. In each case an express contractual arrangement between governmental unit and property owner was a critical factor in the rezoning decision.111 The rezoning ordinances were struck down in every instance. The courts agree on the basic reason for invalidating such ordinances. The primary consideration is that contracts are not proper in the zoning process since a legislative body cannot bargain away the exercise of its police power.112 The Maryland Supreme Court went beyond the contract zoning argument, however, and dealt directly with three other criticisms of zoning with conditions.

First, the court emphasized that there was neither express nor implied statutory authority for the city zoning board to impose conditions.113 Second, the court observed that an ordinance based on a private agreement would adversely affect the basic zoning plan.114 Finally, the court stressed that land use regulations should not be based on evidence extrinsic to the zoning ordinance. If the bases for rezoning were found in outside agreements, the zoning ordinance would not provide adequate notice and predictability to the public.115

Perhaps the key to reconciling the approach of these jurisdictions with the decisions upholding conditional rezoning is provided by the Florida Supreme Court in Hartnett v. Austin.116 The Hartnett court notes that the policy underlying conditional rezoning is not to be condemned, but that criticism should be directed to the means

109. Hartnett v. Austin, 93 So. 2d 86 (Fla. 1956).
111. In Houston Petroleum, the rezoning petitioner entered a written agreement with the city in which the petitioner agreed to record restrictive covenants on the property relating to open space and set back lines. In Baylis, the reclassification was subject to the execution of an agreement between city and owner which restricted the use of the property, and in Hartnett, the ordinance provided that its effectiveness was contingent on a contract between the city and owner covering the requirements placed on the rezoning.
113. The court acknowledged that there might be authority to subject variances and special uses to conditions, but the basis for that power was not present when a complete change in the comprehensive plan was intended. Baylis v. City of Baltimore, 219 Md. 164, 167-68, 148 A.2d 429, 432 (1959).
114. This is essentially another way of phrasing the criticism that zoning with conditions destroys uniformity. See text accompanying notes 44-50 supra.
115. See note 50 supra.
116. 93 So. 2d 86 (Fla. 1956).
employed to effectuate that policy. The court maintained that if properly handled, a conditional rezoning scheme might benefit the entire community. What Hartnett seems to say, therefore, is that the Florida, Maryland, and New Jersey courts were reacting against the form chosen to impose the conditions, and not the substantive validity of conditional rezoning. A comparison of these cases with more recent decisions supports this position.

Presently, at least six jurisdictions have approved conditional rezoning in some form. With two exceptions, conditional rezoning has been held valid in cases in which there was no bilateral agreement between the governmental unit and the property owner. Again, the basic approach taken by courts in these jurisdictions is similar. Since the cases did not involve contract zoning, the courts directed their attention to the results of conditional rezoning and not to the form in which the conditions were implemented.

The New York Court of Appeals in Church v. Town of Islip, was the first court to adopt this analysis. The court found no illegality where the town board made a zoning change conditional on the property owner's recordation of deed restrictions. The court recognized that legislation by contract is impermissible. However, the court was concerned "with actualities, not phrases." In this case, the ramifications of the proposed use on the community necessitated the conditions. The need to accommodate the increasing population of the county, and to mitigate adverse affects on adjacent property were the "actualities" supporting the town board's action. Since the practical result of the conditions benefitted the community in general, there was no justification to strike down the

117. Id. at 90.
119. See note 128 infra.
122. The restrictions limited building location to a specific area of the property and provided that a fence was to be constructed enclosing the area.
rezoning ordinance. The case has been criticized for its brevity, but its pragmatic treatment of conditional rezoning has been followed in other jurisdictions.

If the reclassification conforms to the comprehensive plan and is not the result of a contract, some courts will not object to the method of imposing conditions. These courts, which emphasize compatibility with the general policies of the comprehensive plan, have broadened the scope of judicial inquiry in determining the validity of conditional rezoning. Facts peculiar to the property, the form of the rezoning petition, and the desirability of the proposed use itself are important elements in this determination.

Finally, an additional practical consideration has been raised by the Wisconsin Supreme Court. In *State ex rel. Zupancic v. Schimenz*, the court noted that permitting private agreements to condition a change in use gives a municipality flexibility in meeting complex zoning problems. Faced with increasing demands for rezoning in rapidly changing areas, the zoning authority has the means to tailor rezoning petitions to promote both the development of the community and the general policies of the comprehensive plan. Also, the court maintained that the validity of a conditional ordinance should be measured in the same manner as other zoning decisions. The ordinance must further the public health, safety, and welfare, and must not constitute illegal spot zoning.

The rules developed in other jurisdictions, therefore, are not irreconcilable. Even in those jurisdictions which uphold conditional rezoning, an ordinance adopted pursuant to an express contract between property owner and governing body is not valid. What the courts approving conditional rezoning recognize, however, is that there are circumstances where the exaction of conditions does not

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128. But see *State ex rel. Myhre v. City of Spokane*, 70 Wash. 2d 207, 422 P.2d 790 (1967), where the court suggests that even contract zoning may be valid. An amendment to the zoning ordinance and a concomitant agreement involving the city would be void only if it was shown that there was no valid reason for the reclassification and it had no relation to the public health, safety and welfare. According to the court, contract zoning is improper only when the city uses the agreement for bargaining and sale to the highest bidder or solely for the benefit of private speculators. See also Scrutton v. County of Sacramento, 275 Cal. App.2d 412, 79 Cal. Rptr. 872 (1969) and note 18 supra. These cases represent an extreme position not followed by other courts.
constitute a bargaining away of the zoning power. When these circumstances exist, rezoning with conditions is a realistic solution to the problems presented by the requested change of use.

**IMPACT OF GOFFINET**

*Goffinet* marks the first time the Illinois Supreme Court has squarely faced the issue of conditional rezoning. The determination that conditional rezoning is not invalid provides local zoning officials with an alternative device for land use control. Conditional rezoning will inject much needed flexibility into the land use decision-making process. Local governments can more effectively balance (1) the community’s interest with the interests of the individual property owner, (2) economic necessity with social and aesthetic concerns, and (3) conformity to the comprehensive plan with changing circumstances.

*Goffinet* follows the developing judicial trend in other jurisdictions in sustaining conditional rezoning. The decision focuses greater attention on the merits of the proposed rezoning ordinance than on its form. This approach is significant at two stages of the rezoning process. At the local government level, the critical question will be whether the proposed use and the conditions meet the needs of the community. If the local government action is challenged, courts must determine that the conditional rezoning ordinance is improper in both substance and form before invalidating it. The applicant for the use change, the adjacent property owners, and the community stand to benefit from this approach.

The impact of *Goffinet* ultimately depends on the exercise of discretion by local zoning authorities. The supreme court did not provide explicit guidelines for determining when conditional rezoning is valid or invalid. It is obvious, however, that zoning officials do not have the right to impose conditions in every situation. Conditions which are extraneous to the merits of the rezoning request should still be improper in the rezoning process. If conditions are imposed similar to those in *Hedrich v. Village of Niles*, and *Andres v. Village of Flossmoor*, conditional rezoning will be stripped of its salutory character. In that situation, the rezoning ordinance should be declared void.

The extent *Goffinet* contributes to land use control, therefore, will be related to the ability of zoning officials to frame conditions con-

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129. See text accompanying note 67 supra.
consistent with the underlying purpose of conditional rezoning. At a minimum, the conditions must relate to the proposed use and be designed to accommodate conflicting interests. The specific problems which a new use will create must be identified. Once these problems are isolated, conditions can be placed on the rezoning proposal to minimize their effect. This kind of analysis will lead to more considered and rational land use decisions.

CONCLUSION

There are valid distinctions between contract zoning and conditional rezoning. The rule announced by the Illinois Supreme Court in Goffinet recognizes the different legal implications of these separate zoning devices. The court followed the trend of other jurisdictions and approached conditional rezoning in terms of its practical advantages. However, the supreme court did not address the criticism that conditional rezoning is invalid for lack of statutory justification. It is plausible, therefore, that a reasoned argument based on this contention might be successful.

Nevertheless, the validity of conditional rezoning ordinances after Goffinet will be measured by the same standards applicable to other zoning ordinances. An ordinance which substantially satisfies the test outlined in La Salle National Bank & Trust Co. v. County of Cook is not invalid because it contains conditions. Although the court did not provide separate guidelines for determining the validity of particular conditions, it appears that conditions which promote the fundamental purpose of conditional rezoning are permissible. Conditional rezoning ordinances, enacted pursuant to these requirements, will afford local government greater flexibility in administering zoning policy and will lead to improved land use development in Illinois.

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