



25 Walton Street, Saratoga Springs, New York 12866  
P 518.886.1902 | www.ruppbaase.com

**PHILLIP A. OSWALD**  
OSWALD@RUPPBAASE.COM

September 9, 2020

**Via Electronic Mail**

Troy City Council  
433 River Street  
Troy, NY 12180  
[mara.drogan@troyny.gov](mailto:mara.drogan@troyny.gov)  
[citycouncil@troyny.gov](mailto:citycouncil@troyny.gov)

Dear Hon. Sirs/Madams,

Re: September 10, 2020 Hearing  
Ordinance Authorizing Amendment – Parcel No. 70.64-1-1  
Spot Zoning  
Our File No.: 7754.19332

I represent the Friends of the Mahicantuck and the Schaghticoke First Nations. I am writing to respectfully request that this letter — as well as a prior letter that my office submitted on behalf of my clients to the Planning Committee — be added to the meeting minutes and be considered in consideration for the Resolution Referring Lansingburgh Zoning Change Request To Planning Commission for Review and Recommendation that is being heard before the Council on September 10, 2020. The prior letter referenced above is attached hereto as Addendum A. Ultimately, this letter and Addendum A are being submitted in opposition to the Ordinance Authorizing Amendment of the City of Troy Zoning Map Established by the Troy Code Section 285-49 (A) to Rezone Tax Map Parcel Number 70.64-1-1 on 2nd Avenue in North Troy (the “proposed rezoning”).

This letter is being submitted in addition to and to supplement Addendum A. In particular, this letter addresses comments from the City’s Commissioner of Planning & Economic Development, Mr. Strichman, at the Planning Commission’s hearing on August 27, 2020. As discussed in Addendum A, the rule prohibiting spot zoning is well established under New York common law. *E.g., Matter of Yellow Lantern Kampground v. Cortlandville*, 279 A.D.2d 6, 9, 716 N.Y.S.2d 786, 789 (3d Dept. 2000). With respect to section 81-f of the N.Y. General City Law, that statute neither specifically addresses spot zoning nor does it authorize the designation of an area as a planned development area in a manner that violates the rule against spot zoning. N.Y. Gen. City Law § 81-f (McKinney’s 2020). Instead, that statute

authorizes such a designation only if it is consistent with a city’s comprehensive plan, which actually is consistent with the rule prohibiting spot zoning. *Id.*<sup>1</sup>

Furthermore, statutes — such as section 81-f — will only be applied to supersede or abrogate common-law rules — such as the rule prohibiting spot zoning — when the statutory language is specific that the legislature intends to abrogate the common-law rule. *Hechter v. New York Life Ins. Co.*, 46 N.Y.2d 34, 39, 412 N.Y.S.2d 812, 815 (1978) (“it is a general rule of statutory construction that a clear and specific legislative intent is required to override the common law”); *People v. King*, 61 N.Y.2d 550, 555, 475 N.Y.S.2d 260, 262 (1984) (“if the terms of a statute are subject to two interpretations, that which most comports with the common law should be adopted”). In other words, if section 81-f is to be interpreted to overrule the rule against spot zoning with respect to planned development designations, the statutory language needs to specifically and unambiguously state so. *See id.* However, section 81-f includes no such language, but, instead, actually further reinforces and applies the rule against spot zoning to planned development designations by requiring that any such designation be consistent with the comprehensive plan. N.Y. Gen. City Law § 81-f.<sup>2</sup>

Therefore, since section 81-f does not specifically address spot zoning and does not provide any indication that it was intended to abrogate or in any way effect the long-standing common law prohibition against spot zoning, that statute does not protect the proposed ordinance from being invalidated on the basis of spot zoning. Moreover, even assuming, arguendo, that section 81-f did somehow abrogate the common-law rule against spot zoning, that statute still requires that any designation of an area as a planned development area be consistent with the Realize Troy Comprehensive Plan (May 2018) (the “Comprehensive Plan” or the “Plan”). Indeed, for the reasons discussed at length in Addendum A and as supported by the overwhelming wealth of evidence that presently is in the record on this matter, the proposed

---

<sup>1</sup> From a more practical perspective, since section 81-f requires that any re-designation be consistent with the applicable comprehensive plan and since a determinative factor for spot zoning likewise is consistency with the comprehensive plan, any argument that section 81-f abrogates or even impedes the rule against spot zoning is circular and meaningless at best. N.Y. Gen. City Law § 81-f; *Matter of Yellow Lantern Kampground*, 279 A.D.2d at 9-10 (quoting *Matter of Save Our Forest Coalition v. City of Kingston*, 246 A.D.2d 217, 221, 675 N.Y.S.2d 451 (3d Dept. 1998)).

<sup>2</sup> During the Planning Committee’s public hearing on August 27, 2020, Mr. Strichman stated that there were several cases supporting that section 81-f made the rule against spot zoning inapplicable to planned development re-designations. However, based on citation research for section 81-f through Westlaw’s “KeyCite,” not a single reported case in New York has ever cited or analyzed that statute. I would welcome Mr. Strichman to provide this office with copies of the cases that he was referencing or citations to the same, as well as welcoming any opinion letter from the City’s legal counsel. Indeed, a free and open debate on the legality of the proposed rezoning would be healthy and beneficial.

rezoning would constitute impermissible spot zoning and would violate section 81-f because it, in fact, is inconsistent with the Comprehensive Plan.

Furthermore, in addition to being highly inconsistent with the Comprehensive Plan, the proposed rezoning also is inconsistent with the City's own local law for "P Planned Development" districts. See Code of the City of Troy, New York, Art. IV, § 285-57 (available at <https://ecode360.com/11133910>) (last visited Sept. 8, 2020) (the "City Code"). Specifically, the proposed rezoning is inconsistent with the City Code in the following respects:

- Residential density is "[n]ot to exceed eight units per acre" under § 285-57(D) of the City Code, but the proposed project would consist of approximately 25 units per acre — *more than three times what is permitted under the City Code* (Project Narrative for Second Avenue at 2 (Aug. 19, 2020) ("Project Narrative")).
- The "[m]aximum building height" allowed under § 285-57(E)(3)(f) of the City Code is 40 feet, but the proposed project would entail several structures of approximately 60 feet in height (Project Narrative at 2).
- "To the extent feasible, at least 10% of the total number of dwellings within this District should be in single-family detached structures" under § 285-57(H)(1) of the City Code, but the proposed project would not entail any single-family structures (*see* Project Narrative at 2).
- "Building height, size and design shall be appropriate to the location within the district where proposed" under § 285-57(H)(2) of the City Code, but the proposed project would entail large, three-to-four story, 60-foot-high, multi-family structures in a location that is currently undeveloped open space that is surrounded by single-family residences (Project Narrative at 2).
- "Landscaped open spaces or open areas left in their natural state should be provided at a ratio of not less than 1,000 square feet of open space for every dwelling unit" under § 285-57(H)(4) of the City Code, but it is highly unlikely that a 240-unit project with all of the attendant amenities, utilities, et cetera would be able to achieve this required ratio (*see* Troy Second Ave. Concept Plan C-2 (Aug. 2020) ("Concept Plan")).
- "Where feasible, natural features such as streams, rocks, outcrops, topsoil, trees and shrubs shall be preserved and incorporated in the landscape of the development" under § 285-57(H)(6) of the City Code, but the proposed project would unnecessarily eviscerate many of these features (*compare* Troy Second Ave. Existing Conditions C-1 (Aug. 2020) ("Existing Conditions Map") *with* Concept Plan).

Even more concerning, however, is that the Project Narrative utterly fails to address these obvious concerns, and, in fact, it highlights them. While the developer most likely is unwilling to incur the costs of addressing these concerns without a rezoning first, catering to a developer's interests in such a manner, at best, is *highly irresponsible*. A change in local law should not even be considered without thoroughly addressing the consequences of the change, especially here

given the environmental and cultural significance of the property at issue. Put simply, the Council's approach to legislation should not be "legislate first, ask questions later," regardless of how inconvenient it is to developers.

For the reasons discussed above and those discussed at length in Addendum A, it is respectfully submitted that the proposed rezoning would constitute spot zoning. Section 81-f of the General City Law *has absolutely no effect* on whether the proposed rezoning would be impermissible spot zoning. Indeed, section 81-f requires any re-designation to be consistent with a comprehensive plan, which is a key factor in the spot-zoning analysis. Again, the proposed rezoning is inconsistent with the Comprehensive Plan, and there has been no meaningful, non-superficial submission or argument to the contrary. Thank you in advance for your courteous consideration of this submission.

Sincerely,

A handwritten signature in black ink, appearing to be "P. Oswald", with a long horizontal line extending to the right.

Phillip A. Oswald

cc: Mr. Steven Strichman {via electronic mail – [steven.strichman@troyny.gov](mailto:steven.strichman@troyny.gov)}  
*Commissioner of Planning & Economic Development*  
City of Troy, Planning Department

Ms. Carmella Mantello {via electronic mail – [carmella.mantello@troyny.gov](mailto:carmella.mantello@troyny.gov)}  
*President*  
Troy City Council

# ADDENDUM A



25 Walton Street, Saratoga Springs, New York 12866  
P 518.886.1902 ◀ www.ruppbaase.com

**PHILLIP A. OSWALD**  
OSWALD@RUPPBAASE.COM

August 27, 2020

**Via Electronic Mail**

Troy City Council Planning Committee  
433 River Street  
Troy, NY 12180  
[mara.drogan@troyny.gov](mailto:mara.drogan@troyny.gov)  
[aaron.vera@troyny.gov](mailto:aaron.vera@troyny.gov)

Dear Hon. Sirs/Madams,

Re: August 27, 2020 Hearing  
Ordinance Authorizing Amendment – Parcel No. 70.64-1-1  
Our File No.: 7754.19332

I represent the Friends of the Mahicantuck and the Schaghticoke First Nations. I am respectfully requesting that this letter be added to the meeting minutes and be considered in opposition to the Ordinance Authorizing Amendment of the City of Troy Zoning Map Established by the Troy Code Section 285-49 (A) to Rezone Tax Map Parcel Number 70.64-1-1 on 2nd Avenue in North Troy (the “proposed rezoning”) that is being heard before the Committee on August 27, 2020. For the reasons discussed below, it is respectfully submitted that the proposed rezoning would constitute unlawful spot zoning. Particularly, the proposed rezoning and the development project being proposed for parcel number 70.64-1-1 (the “property”) is highly inconsistent with and would actually violate several key provisions of the Realize Troy Comprehensive Plan (May 2018) (the “Comprehensive Plan” or the “Plan”).

**I. SPOT ZONING UNDER NEW YORK LAW.**

Under New York law, the “classic” definition of spot zoning was provided by the N.Y. Court of Appeals in its 1951 decision in *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E.2d 731 (1951). In that case, the Court of Appeals defined spot zoning as follows:

[T]he process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners . . . “spot zoning” is the very antithesis of planned zoning.

*Id.* at 123-24. This definition since has been followed and repeated by several courts that have analyzed whether proposed rezoning constitutes impermissible spot zoning. *E.g.*, *Matter of Yellow Lantern Kampground v. Cortlandville*, 279 A.D.2d 6, 9, 716 N.Y.S.2d 786, 789 (3d Dept. 2000).

Since the *Rodgers* decision, New York courts have applied the definition of spot zoning through an analysis of several factors. Specifically, the following factors are applied to determine whether impermissible spot zoning has occurred: (1) whether the proposed use is compatible with surrounding uses; (2) whether the rezoning is consistent with a comprehensive land use plan; (3) any likelihood of harm to surrounding properties; (4) recommendations of professional planning staff; and (5) availability and suitability of other parcels. *E.g.*, *Matter of Yellow Lantern Kampground*, 279 A.D.2d at 9-10 (quoting *Matter of Save Our Forest Coalition v. City of Kingston*, 246 A.D.2d 217, 221, 675 N.Y.S.2d 451 (3d Dept. 1998)). It is important to remember, however, that “[n]o single factor is dispositive,” and “the ultimate test is ‘whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community.’”<sup>1</sup> *Matter of Yellow Lantern Kampground*, 279 A.D.2d at 9-10 (quoting *Matter of Save Our Forest Coalition*, 246 A.D.2d at 221).

## **II. APPLICATION OF THE SPOT ZONING FACTORS TO THE PROPOSED REZONING AND THE PROPOSED USE OF THE PROPERTY.**

When applying the factors that have been articulated by New York courts to determine whether spot zoning has occurred, each factor supports that the proposed rezoning constitutes spot zoning. Subpoint A below addresses the first factor, Subpoint B below addresses the second through fourth factors, and Subpoint C below addresses the fifth factor.

### **A. Whether the Proposed Rezoning is Compatible With Surrounding Uses.**

Here, the clear majority of the surrounding properties are used as single-family residences — *i.e.*, an “R1” zoning designation — while the proposed rezoning would permit for the property to be used for an “apartment complex with six (6) 3-story buildings sitting atop covered parking spaces — resulting in a Planned Development or “P” zoning classification for the property (Official Zoning Map, City of Troy (Dec. 19, 2016) (“Zoning Map”); Resolution Referring Lansingburgh Zoning Change Request to Planning Commission for Review and Recommendation (undated) (“Proposed Resolution”); *see also* Project Narrative for Second Avenue at 1 (Aug. 19, 2020) (“Project Narrative”) (“six multi-family buildings, associated parking, stormwater management, site amenities and utilities”).

---

<sup>1</sup> Indeed, by statute in New York, “[a]ll city land use regulations must be in accordance with a comprehensive plan adopted pursuant to this section.” N.Y. Gen. City Law § 28-a(12) (McKinney’s 2020).

While the existing use of surrounding properties and the proposed use of the property are both residential, several material differences exist between these two distinct types of residential uses. Undoubtedly, single-family residences — even a neighborhood of them — are categorically different than several large multi-family structures containing hundreds of units.<sup>2</sup> First, the population density in the given geographical areas is substantially greater for large multi-family, residential structures, such as what is being proposed. Second, the structures themselves change the character of the area, as they are different in almost all respects from single-family houses. Third, the utility and other ancillary services that are necessary for such an increased density inherently differ from those associated with a single-family neighborhood. Therefore, even though both uses are residential, it would be illogical, arbitrary, and superficial to conclude that both are compatible on this ground because it would overlook the actual differences between the two uses.

Lastly, again, it should be noted that the proposed rezoning would classify the property as a planned development area — *i.e.*, an “P” zoning designation (Proposed Resolution). However, in the context of the geographical boundaries of the City, no other planned development area is in close proximity to the property, which also means that the proposed rezoning is inconsistent with uses on surrounding areas (*see* Zoning Map). The closest area classified as planned development is separated from the property by several city blocks and several differently zoned areas. Accordingly, the proposed rezoning would not be compatible with uses of surrounding properties, especially considering the majority of those properties are used as single-family residences and the proposed use for the property would entail several large, densely packed apartment buildings. Thus, the first factor in the spot zoning analysis supports that the proposed rezoning is spot zoning.

**B. Whether the Rezoning is Consistent With a Comprehensive Land Use Plan, Likelihood of Harm to Surrounding Properties, and Recommendations of Professional Planning Staff.**

Turning to the second through fourth factors of the spot zoning analysis, these factors will be discussed collectively in this section because they are each related when assessing the proposed rezoning here. To explain, the Comprehensive Plan obviously controls the second factor — *i.e.*, whether the rezoning is consistent with a comprehensive land use plan. However, it also controls the third and fourth factors, as the Plan presumably was put in place to avoid

---

<sup>2</sup> In fact, courts have held that increasing the density of residents in an area can be a basis for a finding that rezoning constituted spot zoning, even if the surrounding area also is residential. *See Matter of Cannon v. Murphy*, 196 A.D.2d 498, 498, 600 N.Y.S.2d 965, 966 (2d Dept. 1993) (rezoning that allowed one residence per every 0.26 acres constituted spot zoning when the surrounding area allowed one residence per every 2 acres).



harm to surrounding properties<sup>3</sup> and was based on the recommendations of professional planning staff. Accordingly, here, consistency with the Comprehensive Plan can be used to analyze the proposed rezoning in the context of the second through fourth factors. For several reasons, the proposed rezoning is inconsistent with the Comprehensive Plan.

1. The Proposed Rezoning is Inconsistent With Goal 1 and Goal 6.

Goal 1 and Goal 6 of the Comprehensive Plan make clear that high density, multi-family residential use should not occur on the property. Specifically, the property is located in a “Low-Rise Residential Area” that should only entail “low-density” residential uses (Comprehensive Plan at 62, 64). High to mid-density residential use should occur closer to the City Center, even if not within its boundaries (*see id.* at 61-62, 64). Indeed, the Plan explicitly provides:

The City of Troy is largely built out. Opportunities for change, development, growth and community revitalization will need to occur within developed areas, through intensification or infill development. Infill can support improvements to public transit as well as walking and cycling infrastructure. It can also revitalize neighborhoods and areas of the city that contain brownfield and greyfield sites. Infill development makes use of existing structures and infrastructure and is therefore considered a more sustainable city-building approach compared to continued outward expansion which has occurred in the counties of the Capital District.

(*id.* at 61). Furthermore, Goal 1 clearly provides that residential use should be directed toward the City Center, which is specifically identified as a “*key* area for residential growth” (*id.* at 29 (emphasis added)). Certainly, doing so would mitigate the “high vacancy rates [that] are also contributing to neighborhood destabilization,” which is an important objective emphasized throughout the Plan (*id.* at 11).

Therefore, the proposed rezoning would further contribute to the “built out” residential model that the Plan emphatically seeks to avoid, as the property, in fact, is located on the very *peripheral* of the City’s boundaries (*see Zoning Map*). In other words, the proposed rezoning would be the antithesis of the “compact growth” that is prioritized in the Plan, including directing residential development away from “key” areas. Thus, the proposed rezoning is inconsistent with these two goals of the Comprehensive Plan.

---

<sup>3</sup> N.Y. Gen. City Law § 28-a(12) (McKinney’s 2020) (“[a]mong the most important powers and duties granted by the legislature to a city government is the authority and responsibility to undertake city comprehensive planning and to regulate land use for the purpose of protecting the public health, safety and general welfare of its citizens”).

2. The Proposed Rezoning is Inconsistent With Goal 4 and Goal 5.

The proposed rezoning is inconsistent with Goal 4 and Goal 5 of the Comprehensive Plan in the following three crucial ways: (1) it decreases access to important open spaces and nature-based recreational resources, including the Hudson River and its shoreline; (2) it is detrimental to the environmental and ecological health of the area; and (3) it would not only threaten, but would completely eviscerate an irreplaceable historical and cultural site.

First, increased access to open space and nature-based recreation is a critical goal and theme weaved throughout the Comprehensive Plan. Specifically, it is highlighted by, inter alia, the following provisions:

- Troy’s 7.5 miles of waterfront along the Hudson River also represents a *significant open space and recreational asset*. However, much of the waterfront is currently inaccessible to the public. (Comprehensive Plan at 15) (emphasis added).
- With very few exceptions, notably at Riverfront Park, Troy’s waterfront is not visible, and the city turns its back to the river. North of the downtown, *much of the waterfront is occupied by private residential uses and there are few opportunities to experience the waterfront*. (*Id.* at 18) (emphasis added).
- Transforming the river’s edge into a series of unique waterfront places each with a distinct role to play in the future of Troy’s economy is a *tremendous opportunity* to bolster the city as a whole. (*Id.* at 18) (emphasis added).
- A city’s open space network and the variety of its recreational and cultural offerings *contribute significantly* to a community’s *quality of life*, overall *health* and *competitive advantage* within the region. (*Id.* at 51) (emphasis added).
- Public streets that end at the water’s edge will be transformed into waterfront lobbies for improved enjoyment and access to the waterfront. (*Id.* at 52).

Accordingly, increasing and protecting — rather than forfeiting — open spaces and nature-based recreational spaces is a clear and resounding priority and goal under the Plan, including, in particular, increasing access to the Hudson River. *Indeed, one explicit goal is to “[r]econnect Lansingburgh visually and physically to the Hudson River shoreline”* (*id.* at 36) (emphasis added). The proposed rezoning, however, would completely contravene these clear goals and priorities under the Plan by leading to more “waterfront [being] occupied by private residential uses” and thereby further limiting “opportunities to experience the waterfront.” Even more importantly, aside from being inconsistent with the Plan, the proposed rezoning would be a deliberate step towards decreasing the “quality of life” and “overall health” of the community.

Second, with respect to environmental and ecological integrity, the Plan yet again includes unambiguous language that prioritizes this as a goal. Indeed, Goal 4 is titled “Preserve and Showcase the City’s Parks, Open Spaces and Cultural Assets” (Comprehensive Plan at 51). Additionally, the Plan includes, inter alia, the following passages:

- The majority of the Hudson River shoreline south of the Collar City Bridge has been channelized, which has interrupted or removed natural ecosystems. Due to this activity, sediment from the Hudson River is no longer deposited on the banks, and limited habitat is available for fish and wildlife species. (Comprehensive Plan at 16) (emphasis added).
- Existing ecological resources including wetlands and shoreline habitat shall be protected, preserved and enhanced. (*Id.* at 58) (emphasis added).
- For new development with frontage on the waterfront that is 500 square feet or greater, the City of Troy will require the submission of a construction management plan that demonstrates that the development will not compromise the Hudson riverbank. (*Id.*) (emphasis added).

Therefore, in no uncertain terms, the Plan makes clear that protecting, preserving, and enhancing “[e]xisting ecological resources including wetlands and shoreline habitat” is a requirement — they “shall be protected, preserved and enhanced.” In fact, the property here is located in a “New Proposed Coastal Boundary” (*id.* at 60) (emphasis added). Again, however, the proposed rezoning would literally destroy what is likely the last remaining forested tract along the Hudson River. As a result, the proposed rezoning not only would contravene the Plan, but it would be a blatant, undisputable violation of it.<sup>4</sup>

Lastly, but certainly equally as important, the Plan also prioritizes and emphasizes protecting cultural assets, which, again, is reflected in the very title of Goal 4 (Comprehensive Plan at 51). Moreover, the Plan unambiguously provides that “the City must invest in its . . . heritage assets” (*id.* at 9) (emphasis added). Rightfully so, the Plan highlights Native American heritage as the very genesis of the City itself; specifically, on page 5, the Plan provides the following:

The City of Troy’s first occupants were Native Americans who were drawn to the islands situated at the confluence of the Mohawk and Hudson Rivers due to the fertile farmlands and safe, defensive position this location offered at the intersection of these two waterways.

---

<sup>4</sup> At the very least, a review in compliance with the State Environmental Quality Review Act (“SEQRA”) is necessary for the proposed rezoning. To the extent that one has not been performed, the proposed rezoning should be rejected in its entirety. *See Matter of Cannon v. Murphy*, 196 A.D.2d 498, 501, 600 N.Y.S.2d 965, 968 (2d Dept. 1993).

In this respect, one concrete objective under the Plan is to secure a UNESCO World Heritage Site Designation for the “historic downtown and its *broader environment*,” which is noted “would elevate Troy nationally as a *world class heritage destination* with the power to *significantly strengthen* the city’s tourism-related economies” (*id.* at 51) (emphasis added). Here, the cultural and historical significance of the property is detailed at length in the record by those who have direct, in-depth, first-hand knowledge. Given the testimony and record materials from these rightfully concerned citizens, the proposed rezoning would eviscerate one of the most — if not the most — culturally and historically significant sites in the City. Thus, the proposed rezoning would constitute a clear contravention of the Plan in this respect as well.

In sum, the proposed zoning would be in direct contravention of Goal 4 and Goal 5 of the Comprehensive Plan in three critical ways — to wit, foregoing open space and nature-based recreational opportunities, compromising the environmental and ecological integrity of the City’s natural resources, and failing to preserve cultural heritage assets. Thus, the proposed rezoning also is inconsistent with these two goals of the Comprehensive Plan.

### 3. Conclusion.

In sum, the proposed rezoning is inconsistent with the Comprehensive Plan, which courts have referred to as the “ultimate test” when assessing whether a proposed rezoning is spot zoning. In fact, not only is it inconsistent, but the proposed rezoning actually violates the Plan in several respects. Moreover, since the Plan is intended to serve the general welfare of the community, the proposed rezoning also creates a likelihood of harm to surrounding properties because it is inconsistent with the Plan. Likewise, since the Plan most certainly was drafted by planning professionals, the proposed rezoning also goes against the recommendations of those professionals in the Plan. Therefore, the second through fourth factors in the spot zoning analysis support that the proposed rezoning is spot zoning.

#### C. Availability and Suitability of Other Parcels.

Several other parcels are designated for planned development, and there is no legitimate reason why they are not equally available and suitable for the high-density, multi-family uses being proposed (*see* Zoning Map). In fact, those parcels appear to be more suitable according to the Comprehensive Plan because they are “located along corridors” and/or “are close to a high concentration of services, transit and amenities,” thereby rendering them “Mid-Rise” or “High-Rise” residential areas (Comprehensive Plan at 62, 64; Zoning Map). It appears that the only person to whom the property would be more suitable is the option-holder<sup>5</sup> who is requesting the proposed rezoning, which obviously is not a legitimate consideration when

---

<sup>5</sup> It is important to note that as an option holder, the party requesting the proposed rezoning would not lose value or use of property actually owned by him.

determining whether to rezone the property and indeed is highly indicative of spot zoning.<sup>6</sup> Accordingly, the fifth factor in the spot zoning analysis supports that the proposed rezoning is spot zoning.

**III. CONCLUSION.**

In closing, based on the relevant analysis under New York law, it is respectfully submitted that the proposed rezoning would constitute spot zoning. Most importantly, this conclusion is undisputable given the several instances of how the proposed rezoning would directly contravene and even violate the Comprehensive Plan. Accordingly, it is respectfully requested that the proposed rezoning be rejected in its entirety. Thank you for your courtesy and your consideration of this submission.

Sincerely,



Phillip A. Oswald

cc: Mr. Steven Strichman {*via electronic mail – steven.strichman@troyny.gov*}  
*Commissioner of Planning & Economic Development*  
City of Troy, Planning Department

Ms. Carmella Mantello {*via electronic mail – carmella.mantello@troyny.gov*}  
*President*  
Troy City Council

---

<sup>6</sup> See, e.g., *Boyles v. Town Board of Town of Bethlehem*, 278 A.D.2d 688, 690, 718 N.Y.S.2d 430, 432 (3d Dept. 2000).