

STATE OF NEW YORK
SUPREME COURT : COUNTY OF NIAGARA

DAVISON ROAD PROPERTIES, LLC

Petitioner,

Index No. _____

vs.

THE CITY OF LOCKPORT, THE CITY OF LOCKPORT
COMMON COUNCIL, MAYOR JOHN LOMBARDI III,
DR. JOHN D. CRAIG, ANITA MULLANE, MARK S.
DEVINE, KATHRYN FOGLE, MARGARET LUPO,
KEVIN M. KIRCHBERGER,

Respondents.

MEMORANDUM OF LAW IN SUPPORT OF ARTICLE 78 PETITION

This Memorandum of Law is submitted in support of the Verified Petition by Petitioner Davison Road Properties, LLC, seeking a judgment pursuant to CPLR Article 78 annulling and vacating the City of Lockport’s March 2025 rezoning action that reclassified Petitioner’s parcels from Mixed-Use Neighborhood (MU-N) to a newly created Mixed Office (MO) district.

LEGAL STANDARD

An Article 78 proceeding is the appropriate mechanism for reviewing whether a municipal body acted arbitrarily, capriciously, abused its discretion, or failed to perform a duty enjoined upon it by law. See CPLR 7803(3); *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Zoning actions are *invalid* if enacted for an improper purpose, without a rational basis, or in violation of statutory mandates. See (*Matter of Vil. of Kiryas Joel, NY v Vil. of Woodbury, NY*, 138 AD3d 1008 [2d Dept 2016]).

ARGUMENT

POINT I: THE ZONING CHANGE CONSTITUTES UNLAWFUL SPOT ZONING

Spot zoning is defined as a zoning amendment that singles out a small parcel of land for a use classification inconsistent with the surrounding area and the municipality's comprehensive plan. See (*Matter of Bennett v Troy City Council*, 231 AD3d 1386 [3d Dept 2024]). Here, the City of Lockport applied the newly created MO designation to 60 parcels exclusively, without applying the same criteria citywide, and without notice or rationale tied to the comprehensive plan.

POINT II: THE ZONING CHANGE VIOLATES GENERAL CITY LAW § 28-A

General City Law § 28-a(4)(c) requires zoning to be in accordance with a city's adopted comprehensive plan. The February 25, 2025 Base Zoning Map and the City's Comprehensive Plan recommended MU-N designation and adaptive reuse for residential development along the Davison Road corridor. The Council's closed-door reversal subverted this mandate and constitutes arbitrary and capricious governance. See *Asian Americans for Equality v. Koch*, 72 N.Y.2d 121 (1988).

POINT III: THE ZONING CHANGE WAS ENACTED WITHOUT REQUIRED NOTICE OR RATIONAL BASIS

New York courts require that rezoning decisions be supported by a rational basis and subject to due public process. See *Matter of Cowan v. Kern*, 41 N.Y.2d 591 (1977). The record reflects no public hearings, findings of fact, or statements of purpose accompanying the adoption of the MO designation. This violates both procedural due process and statutory notice obligations under General City Law § 28-a(7).

POINT IV: THE ZONING CHANGE HARMS PUBLIC INTEREST AND TAX BASE

The affected parcels have suffered catastrophic economic losses, including judicially confirmed reductions from over \$7.5 million to \$1.4 million in assessed value. See **Hogan Aff Exhibit A**, Order and Judgment. Preventing residential conversions in the face of a housing shortage violates the City’s duty to plan for the general welfare, as required by General City Law § 28-a.

ADDITIONAL LEGAL AUTHORITIES

The case law overwhelmingly establishes my client’s right to immediate and complete relief. See *Matter of Thomas v. Town of Bedford*, 11 N.Y.2d 428 (1962) which holds that zoning must align with the municipality’s comprehensive plan, and that spot zoning that conflicts with planning objectives is invalid.

The Court of Appeals has held in *Rodgers v Tarrytown*, 302 NY 115 [1951] that “‘spot zoning’ is the very antithesis of planned zoning” and zoning reclassifications not aligned with comprehensive plans constitute unlawful spot zoning. See, also, *Matter of 301 E. 66th St. Condominium Corp. v City of NY*, 224 AD3d 423 [1st Dept 2024] that describes as spot zoning a situation where zoning benefits only a single parcel and is inconsistent with a comprehensive plan.

CONCLUSION

For the reasons set forth herein, the March 2025 zoning change must be annulled as arbitrary, capricious, unlawful, and contrary to the City of Lockport’s own planning documents. Petitioner respectfully requests that the Court issue judgment vacating the zoning change and restoring the prior Mixed Use–Neighborhood (MU-N) designation to the subject parcels.

DATED: Amherst, New York
May 21, 2025



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